

DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTION AND RESERVATION OF EASEMENTS

FOR

SUNPOINTE COVE, A CONDOMINIUM

THIS DECLARATION, made on this \_\_\_ day of February, 2000, by Sunpointe Cove, L.L.C., a Utah limited liability corporation, pursuant to, and it is the intention of Declarant to make the project subject to, the Condominium Ownership Act, 57-8-1, et seq., Utah Code Annotated, 1953 Revised, and such is made applicable hereto:

RECITALS:

A. Declarant is the owner of certain property in the County of Weber, State of Utah, which is more particularly described as follows:

A PART OF THE NORTHWEST QUARTER OF SECTION 17, TOWNSHIP 6 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; BEGINNING AT A POINT ON THE WEST RIGHT-OF-WAY LINE OF WALL AVENUE, SAID POINT BEING NORTH 89°16'03" WEST 410.79 FEET, NORTH 00°58'00" EAST, (BASIS OF BEARING), ALONG SAID WEST RIGHT-OF-WAY LINE OF WALL AVENUE 61.09 FEET AND SOUTH 89°43'12" WEST 5.00 FEET FROM THE CENTER OF SAID SECTION 17, SAID POINT ALSO BEING SOUTH 00°58'00" WEST (BASIS OF BEARING), 1145.44 FEET AND SOUTH 89°43'12" WEST 25.01 FEET FROM THE OGDEN CITY MONUMENT AT THE INTERSECTION OF 2nd STREET AND WALL AVENUE, AND RUNNING THENCE SOUTH 89°43'12" WEST ALONG AN EXISTING FENCE 385.56 FEET; THENCE NORTH 00°38'57" EAST 224.23 FEET; THENCE SOUTH 89°25'35" EAST 386.72 FEET TO THE WEST RIGHT-OF-WAY LINE OF SAID WALL AVENUE; THENCE SOUTH 00°58'00" WEST ALONG SAID WEST RIGHT-OF-WAY 218.49 FEET TO THE POINT OF BEGINNING. CONTAINS 1.96 ACRES.

B. Declarant has deemed it desirable, for the efficient preservation of the values and amenities in the real property which may be annexed thereto pursuant to the provisions of this Declaration, to create a non-profit corporation under the Utah Non-Profit and Cooperative Association Act to which should be delegated and assigned the powers of maintaining and administering the Common Area and administering and enforcing the covenants and restrictions, and collecting and disbursing the assessments and charges hereinafter created.

C. Declarant will or has caused such corporation, the Members of which shall be the respective Owners of Units in the Properties annexed pursuant to this Declaration, to be formed for the purpose of exercising the functions aforesaid. As reflected in Article X, each Unit shall be used as a residence for a single family and for no other purpose

D. Declarant will develop and convey all of the Properties (as hereinafter defined),

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pursuant to a general plan for all the Properties and subject to certain protective covenants, conditions, restrictions, reservations, easements, equitable servitudes, liens and charges, all running with the Properties as hereinafter set forth. Declarant may execute, acknowledge and record a Supplemental Declaration affecting solely the Plat (as such term is hereinafter defined), so long as Declarant owns all of the real property to be affected by such Supplemental Declaration. Such Supplemental Declaration shall not conflict with the provisions of this Declaration, but may impose further conditions, covenants and restrictions for the operation, protection and maintenance of the project.

E. Declarant hereby declares that all of the Properties shall be held, sold, conveyed, encumbered, hypothecated, leased, used occupied and improved subject to the following easements, restrictions, covenants, conditions and equitable servitudes, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of the Properties, in furtherance of a general plan for the protection, maintenance, improvement and sale of the Properties, or any portion thereof, consistent with applicable law concerning condominium projects. The covenants, conditions, restrictions, reservations, easements, and equitable servitudes set forth herein shall run with the Properties and shall be binding upon all persons having any right, title or interest in the Properties, or any part thereof, their heirs, successors and assigns; shall inure to the benefit of every portion of the Properties and any interest therein, and shall inure to the benefit of and be binding upon Declarant, its successors in interest, and may be enforced by any owner and his successors in interest, and the Association.

Notwithstanding the foregoing, no provisions of this Declaration shall be construed as to prevent or limit Declarant's rights to complete development of the Properties and construction of improvements thereon, nor Declarant's rights to maintain model homes, construction, sales or leasing offices or similar facilities on any property in the Properties owned by Declarant or the Association, nor Declarant's right to post signs incidental to construction, sales or leasing.

## ARTICLE I

### Definitions

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

Section 1. "Architectural Committee" shall mean the committee created pursuant to Article VIII hereof.

Section 2. "Articles" shall mean the Articles of Incorporation of the Association which have been or shall be filed in the office of the Secretary of State of the State of Utah, and as such Articles may be amended from time to time.

Section 3. "Common Assessment" shall mean the charge against each Owner and his unit,

representing a portion of the total costs to the Association of maintaining, improving, repairing, replacing, managing and operating the Properties, which are to be paid uniformly and equally by each Owner to the Association, as provided herein.

Section 4. "Special Assessment" shall mean the charge against a particular Owner and his Unit, directly attributable to the Owner, equal to the cost incurred by the Association for corrective action performed pursuant to the provisions of the Declaration, plus interest thereon as provided for in this Declaration.

Section 5. "Reconstruction Assessment" shall mean a charge against each Owner and his Unit, representing a portion of the cost to the Association for reconstruction of any portion or portions of the Improvements on the common area pursuant to the provisions of this Declaration.

Section 6. "Capital Improvement Assessment" shall mean a charge against each Owner and his Unit, 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.

Section 7. "Association" shall mean SUNPOINTE COVE OWNERS ASSOCIATION, a corporation for or to be formed under the Utah Non-Profit Corporation and Cooperative Association Act, its successors and assigns.

Section 8. "Beneficiary" shall mean a 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.

Section 9. "Board" shall mean the Board of Directors of the Association, elected in accordance with the Bylaws of the Association.

Section 10. "Bylaws" shall mean the Bylaws of the Association, which have been or shall be adopted by the Board and as such Bylaws may be amended from time to time.

Section 11. "Common Area" shall mean all the real property and improvements depicted on the "plat" as Common Area, including, without limitation, any recreation facilities, landscaped areas and private roadways and walkways which are owned collectively by the Unit owners, as tenants-in-common with undivided one-twentieth (1/20) interests each, for the use and enjoyment of all of the Owners. The Common Area shall also include the private drive which is an extension of 4th Street as set forth on the plat describing the property located in the County of Weber, State of Utah. Common Area shall include the Limited Common Areas as hereafter defined.

Section 12. "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 to managers, 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, workmens compensation insurance, and other insurance covering the properties; and the costs of bonding of the management body; taxes paid by the Association; amounts paid by the Association for discharge of any line or encumbrance levied against 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.

Section 13. "Declarant" shall mean and refer to Sunpointe Cove, L.L.C., its successors and assigns, so long as Declarant assigns such rights of Declarant hereunder to any such person by an express written assignment.

Section 14. "Declaration" shall mean this instrument as it may be amended from time to time.

Section 15. "Deed of Trust" shall mean and refer to a mortgage or a deed of trust, as the case may be.

Section 16. "Dwelling Unit" shall mean and refer to the portion of a building designated as a unit according to the plat, twenty (20) in number with the square footage as set forth in said plat, designed and intended for use and occupancy as a residence by a single family as to which the square footage as to each unit by unit number, number of buildings, number of storeys and basements, additional improvements to the realty contained in the project is depicted on the plat. The principal materials of the construction shall consist of frame with vinyl siding and stucco front of two stories with basement and a one-car garage and abutting parking space .

Section 17. "Family" shall mean (1) a group of natural persons related to each other by blood or legally related to each other by marriage or adoption, or (2) a group of not more than three (3) persons not all so related, inclusive of their domestic servants, who maintain a common household as a residence in a unit.

Section 18. "Improvement" shall mean all structures and appurtenances thereto of every type and kind, including bu not limited to buildings, out buildings, walkways, sprinkler pipes, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior air conditioning and water-softener fixtures or equipment.

Section 19. "Limited Common Area" The locations of the limited common areas are reflected on the "plat" reflecting patio areas to which each unit has direct access as shown on the record of survey map. Driveway area adjacent to the garage of the unit is a limited common area

appurtenant to that unit.

Section 20. "Properties" shall mean and refer to all of the real property described in Paragraph A of the Recitals to this Declaration within which is contained the Common Area made reference to in Article 1, Section 11.

Section 21. "Sunpointe Cove Maintenance Funds" shall mean the accounts created for receipts and disbursements of the Association pursuant to Article VI hereof.

Section 22. "Unit" shall mean and refer to an individual unit as depicted on the plat of Sunpointe Cove, with the exception of the common area.

Section 23. "Manager" shall mean the person, firm or corporation appointed by the Association hereunder as its agent(s) and to which or whom are delegated certain duties, powers or functions of the Association.

Section 24. "Member" shall mean any person or entity holding a membership in the Association as provided herein.

Section 25. "Mortgage; "Mortgagee" shall mean any mortgage or deed of trust or other conveyance of a unit 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 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 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".

Section 26. "Notice and Hearing" shall mean written notice and a public hearing before a tribunal appointed by the Board, at which the Owner concerned shall have an opportunity to be heard in person or by counsel at Owner's expense, in the manner further provided in the Bylaws.

Section 27. "Owner" shall mean and refer to the person or persons or other legal entity or entities, including Declarant, holding fee simple interest of record to any Unit which is a part of the Properties, including sellers under executory contracts 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.

Section 28. "Person" shall mean a natural individual or any other entity with the legal right to hold title to real property.

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Section 29. "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 Weber, State of Utah.

Section 30. "Structural Maintenance Areas" shall mean, as the same may from time to time exist, the exterior surfaces of all residential structures, and allied exterior structures; structural maintenance areas shall specifically exclude all glass areas.

Section 31. "Plat" shall mean that Record of Survey Map being recorded herewith as to the above described parcel of property which has been divided or separated into twenty (20) units, common area, and limited common area as depicted thereon.

The foregoing definitions shall be applicable to this Declaration and also to any Supplemental Declaration or Declaration of Amendment, unless otherwise expressly provided, recorded pursuant to the provisions of this Declaration.

## ARTICLE II

### Owners' Property Rights

Section 1. Ownership of Common Area and Limited Common Area. In addition to the ownership in fee simple of a Dwelling Unit, every unit owner shall own an undivided 1/20 interest as a tenant-in-common with respect to the Common Area the legal description for which is contained in Attachment B previously referenced in Article I, Section 11. This one-twentieth (1/20) interest is applicable for all purposes including voting.

Section 2. Owners' Easements of Enjoyment. Every Owner shall have 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 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 two-thirds (2/3) of each class of members (excluding therefrom the voting power of Declarant), 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 unit 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) Subject to the provisions of Article XIV of this Declaration, the right of the Association 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 two-thirds (2/3) of the voting power of the Class A Members (excluding the voting power of Declarant), agreeing to such dedication, release, alienation or transfer has been recorded.

(g) The right of the Declarant (and its sales agents, customers and representatives) to the non-exclusive use of the common area and the facilities thereof, without charge, for sales, display, access, ingress, egress and exhibit purposes, which right Declarant hereby reserves; provided, however, that such use shall not be for a period of more than seven (7) years after the date of recording this Declaration. Upon the request of Declarant and upon the vote of fifty-one (51%) percent of the Class A Members, this term may be extended for an additional period of time.

(h) The right of the Association (by action of the Board) 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 improvement, 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 seventy-five (75%) percent of the voting power of the Association.

(i) The right of the Association to replace destroyed trees or other vegetation and plant trees, shrubs and ground cover upon any portion of the common area.

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Section 3. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the common area and facilities to the members of his family, his tenants, or contract purchasers who reside in his dwelling unit, subject to reasonable regulation by the Board.

Section 4. Easements for Parking. Temporary guest or recreational parking shall be permitted within the common area only within spaces and areas clearly marked for this purpose. Spaces shall be shown by signs or markings on the paved area. The Association, through its officers, committees and agents is hereby empowered to establish "parking" and "no parking" areas within the common area, as well as to enforce these parking limitations by all means lawful for such enforcement including the removal of any violating vehicle by those so empowered.

Section 5. Easements for Vehicular Traffic. In addition to the general easements for use of the common area reserved herein, there shall be and Declarant hereby reserves and covenants for itself and all future Owners within the Properties that each and every Owner shall have a non-exclusive easement appurtenant for vehicular traffic over all private streets within the Properties, subject to the parking provisions set forth in Section 3 of Article II hereof. Declarant reserves the right to grant similar easements to Owners of property in subdivisions annexed hereto pursuant to Article XV.

Section 6. Easements for City and County Public Service Use. In addition to the foregoing easements over the common area, there shall be and Declarant hereby reserves and covenants for itself and all future Owners, easements for city, county 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 law. Cities shall also exercise easement and right of way on the common areas and facilities for the purposes of repairing and replacing facilities therein and thereon at its option in the event the Owners Association fails and neglects so to do and to have a lien therefor to guarantee replacement of the costs thereof against all the Units in the Properties.

Section 7. Waiver of Use. No Owner may exempt himself from personal liability for assessments duly levied by the Association, nor release the Unit or other property owned by him 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 Unit or any other property in the Properties.

Section 8. Title to the Common Area. The Declarant hereby covenants for itself, its successors and assigns that it will convey fee simple title to the common area described in Article I, Section 11 of this Declaration to the Association, free and clear of all encumbrances and liens, except easements, conditions and reservations set forth in this Declaration. Said conveyance shall be made prior to the conveyance of the first Unit to a purchaser from Declarant.

Section 9. Taxes. Each Owner shall execute such instruments and take such action as may reasonably be specified by the Association to obtain separate real estate tax assessment of each Unit. If any taxes or assessments may, in the opinion of the Association, nevertheless be a lien on



more than one Unit 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 own Unit and interest, if any, in the common area.

### ARTICLE III

#### Membership in Association

Section 1. Membership. Every Owner of a Unit shall be a member of the Association, and no Owner shall have more than one membership in the Association. Memberships in the Association shall not be assignable, except to the successor-in-interest of the Owner, and every membership in the Association shall be appurtenant to and may not be separated from the fee ownership of such Unit. Ownership of such Unit shall be the sole qualification for membership in the Association.

Section 2. Transfer. The Association membership held by any Owner of a Unit shall not be transferred, pledged or alienated in any way, except upon the sale or encumbrance of such Unit, and then only to the purchaser or mortgagee of such Unit. Any attempt to make a prohibited transfer is void, and will not be reflected upon the books and records of the Association. A Class A Member who has sold his Unit to a contract purchaser under an agreement to purchase shall be entitled to delegate to such contract purchaser his membership rights in the Association. Such delegation shall be in writing and shall be delivered to the Board before such contract purchaser may vote. However, the contract seller shall remain liable for all charges and assessments attributable to his Unit until fee title to the Unit sold is transferred. In the event the Owner of any Unit shall fail or refuse to transfer the membership registered in his name to the purchaser of such Unit, 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 Unit, equal to the cost to the Association of effectuating any such transfer of his membership upon the books of the Association.

### ARTICLE IV

#### Voting Rights

Section 1. Classes of Voting Membership. The Association shall have two (2) classes of voting membership as follows:

Class A. Class A Members shall originally be all Owners with the exception of the Declarant for so long as there exists a Class B membership. Class A Members shall be entitled to one (1) vote for each Unit owned. Declarant shall become a Class A Member with regard to Units owned by Declarant upon conversion of Declarant's Class B

membership as provided below. When more than one person holds an interest in any Unit, all such persons shall be members. The vote for such Unit shall be exercised in accordance with Article IV, Section 2 of this Declaration, and in no event shall more than one (1) vote be cast with respect to any Unit.

Class B. The Class B Member shall be the Declarant and Declarant shall be entitled to three (3) votes for each Unit owned by Declarant. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earliest:

- (a) When the total votes outstanding in the Class A membership, inclusive of votes attributable to any property annexed to the Properties, equals the total votes outstanding in the Class B membership; or
- (b) Three (3) years from the date of recording this Declaration; or
- (c) On voluntary cancellation of Class B membership by Declarant.

Section 2. Vote Distribution. Members shall be entitled to one (1) vote for each Unit in which they hold the interest required for membership. When more than one person holds such interest or interests in any Unit, ("co-owner"), all such co-owners shall be Members and may attend any meetings of the Association, but only one such co-owner shall be entitled to exercise the vote to which the Unit is entitled. Such co-owners may from time to time all designate in writing one of their number to vote. Fractional votes shall not be allowed, and the Class A vote for each Unit shall be exercised, if at all, as a unit. Where no voting co-owner is designated or if such designation has been revoked, the vote for such Unit shall be exercised as the majority of the co-owners of the Unit mutually agree. Unless the Board 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 or her co-owners. No vote shall be cast for any Unit where the majority of the co-owners present, in person or by proxy and representing such Unit 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 Unit 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 Association

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) Maintain all private streets within the Properties, including cleaning and periodic resurfacing.

(c) Maintain all private sewer systems within the common area.

(d) 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.

(e) 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 interest of the Association and members and as directed by this Declaration and the Bylaws of the Association.

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

## ARTICLE VI

### Covenant for Maintenance and Water Assessments

Section 1. Creation of the Lien and Personal Obligation of Assessments and Monthly Payment of Pro Rata Water Billing. Inasmuch as the project shall have one water main with no capability to provide individual water metering to Owners, each Owner shall pay a pro rata share of the monthly water billing. Declarant, for each Unit owned by Declarant within the Properties, hereby covenants, and each Owner of any Unit 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) monthly pro rata share of the project water billing, (2) annual common assessments for common expenses, (3) capital improvements assessments, (4) special assessments, and (5) reconstruction assessments; such assessments to be established and collected as hereinafter provided. Such assessments, together with interest, costs and reasonable attorneys' 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 costs, interest and reasonable attorneys' 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

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interest of such owner. The board of Directors shall establish no fewer than two (2) such separate accounts (the "Sunpointe Cove 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 Sunpointe Cove 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 Sunpointe Cove Maintenance Funds with one another.

Section 2. Purpose of Common 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 improvement and maintenance of the common area and of the dwelling units as provided herein. 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 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 purposes specified in the 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 Sunpointe Cove Maintenance Funds by the Association, so long as the amounts deposited into any such Fund are earmarked for specified purposes authorized by this Declaration.

Section 3. Damage to Common Area by Owners. The foregoing maintenance, repairs or replacement within the common area arising out of or caused by the willful or negligent act of the Owner, his family, guests or invitees shall be done at said Owner's expense or a Special Assessment therefor shall be made against his Unit; 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.

Section 4. Basis of Maximum Common Assessment. Until January 1 of the year immediately following the conveyance of the first unit in the Properties to an Owner, the maximum Common Assessment under Article VI shall be ONE THOUSAND DOLLARS (\$1000.00) per Unit per year beyond the cost of water to unit owners on a pro rata basis.

(a) From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual Common Assessment may be increased by the Board effective January 1 of each year not more than the greater of 1) ten percent

(10%), or (2) the percentage by which the U.S. Bureau of Labor Statistics for the Northern Utah area, all items Consumer Price Index has increased as of the date of the increase over the level of said index as of the date the Common Assessment was last established, above the maximum annual common assessment for the previous year, without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual Common Assessment may be increased above the greater of (1) ten percent (10%), or (2) said percentage by which said Index has so increased, by the vote or written assent of fifty-one percent (51%) of each Class of Members.

(c) The Board of Directors may fix an annual Common Assessment at an amount not in excess of the maximum.

Section 5. Capital Improvements and Reconstruction Assessments. In addition to the Common Assessments authorized above, the Board of Directors of the Association 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 and personal property related thereto; provided that any such assessment shall have the vote or written assent of two-thirds (2/3) the votes of Members who are subject to such assessments, excluding therefrom the votes of Declarant.

Section 6. Notice and Quorum for any Action Assessing Under Section 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, no 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 notice 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.

Section 7. Uniform Rate of Assessment. Common Assessments, Capital Improvement Assessments, and Reconstruction Assessments provided for in this Article VI must be fixed at a uniform rate for all Units 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 agent. All Common Assessments shall be collected on a regular basis by the Board of Directors, at such frequency as the Board shall determine.

Section 8. Date of Commencement of Common Assessments: Due Date. The annual

Common Assessments provided for herein shall commence on the first day of the month following the conveyance of the Common Area within the project. The first annual Common 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 Common Assessment against each Unit at least thirty (30) days in advance of each Common Assessment period. Written notice of any change in the amount of the annual Common 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 Unit have been paid. A properly executed certificate of the Association as to the status of assessments against a Unit 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 Sunpointe Cove Maintenance Fund).

Each annual Common Assessment shall constitute an aggregate of separate assessments for each of the Sunpointe Cove 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 Sunpointe Cove Maintenance Fund established by the Association. If the estimated sums prove inadequate for any reason, including nonpayment of any Owner's annual Common Assessment, the Board may, at any time, levy supplemental Common Assessments, subject to provisions of Section 4 of this Article, for any of the Sunpointe Cove Maintenance Funds which shall be assessed equally against the Owner of each Unit in the Properties.

Each annual Common 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 Sunpointe Cove Maintenance Funds. In the event that any installment of a Common Assessment payment is less than the amount assessed and the payment does not specify the Sunpointe Cove 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 Common 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 Common Assessments. Notwithstanding anything contained in the Articles or Bylaws to the contrary, if prior to dissolution of the Association, the Association has not obtained tax exempt status from both the Federal and State government, then upon such dissolution of the Association, any amounts remaining in the Common Area Reserve Funds shall be distributed to or for the benefit of the Members in a proportion equal to their individual, respective contributions.

Section 9. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments 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

Section 1. Effect of Non-Payment of Assessments; Remedies of the Association. Any installment of a Common Assessment, Capital Improvement Assessment, Special Assessment or Reconstruction Assessment not paid within thirty (3) days after the due date shall bear interest from the due date of such installment at the rate of twelve (12%) per cent 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 Five Dollars (\$5.00) or five percent (5%) 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 Unit. 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 Unit. If any installment of a Common Assessment is not paid within thirty (30) days after its due date, the Board 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 Common Assessment for the then current fiscal year and sale of the Unit. The notice shall further inform the Owner of this right to cure after acceleration and to bring a court action to assert the non-existence of a default or any other defense of the Owner to acceleration and sale. If the delinquent installments of Common Assessments and any charges thereon are not paid in full on or before the date specified in the

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notice, the Board at its option may declare all of the unpaid balance of the annual Common Assessment to be immediately due and payable without further demand and may enforce the collection of the full Common Assessment and all charges thereon in any manner authorized by law and this Declaration.

Section 2. 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 Postal Service, certified or registered, postage prepaid, to the Owner of the Unit, 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 Unit, the record Owner or reputed Owner thereof, the amount claimed (which may at the Association's option include interest on the unpaid assessment at twelve per-cent (12%) per annum, plus reasonable attorney's fees and expenses of collection in connection with the debt secured by said lien), 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.

Section 3. 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 in accordance with the provisions of the Utah Code Annotated, 1953 As Amended, 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 bid on the Unit at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same.

Section 4. 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 Fifty Dollars (\$50), to cover the cost of preparing and recording such release. A certificate executed and acknowledged by any two (2) members of the Board stating the indebtedness secured by the liens upon any Unit 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 Ten Dollars (\$10.00).

Section 5. 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.

Section 6. 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 other 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 Unit shall not affect the assessment lien. However, the sale or transfer of any Unit 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 Unit from liability for any installments of assessments thereafter becoming due or from the lien thereof.

## ARTICLE VIII

### Architectural Control

Section 1. Members of Committee. The Architectural Committee, sometimes referred to in this Declaration as the "Committee", shall consist of three (3) members. The initial members of the Committee shall consist of representatives of Declarant. Each of said persons shall hold office until the election of the first Board of Directors by the membership of the Association. Thereafter, new members of the Committee shall be appointed by the Board of Directors and shall hold office until such time as he has resigned or has been removed or his successor has been appointed, as provided herein. Members of the Committee may be removed at any time without cause. The Board of Directors shall have the right to appoint and remove all members of the Committee.

Section 2. Review of Proposed Construction. Subject to Article X, Section 2, of this Declaration, 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 or 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 or plans and specifications on such changes therein as it deems appropriate, upon the agreement by the Owner submitting the same to grant appropriate easements to the Association for 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 guidelines setting forth procedures for the submissions 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 One Hundred Dollars (\$100.00). The Committee may require such detail in plans and specifications submitted for its

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review as it deems proper, including, without limitation, floor plans, site plans, drainage plans, elevation drawings and description or samples of exterior material and colors. Until receipt by the Committee of any required plans and specifications, the Committee may postpone review of any plans submitted for approval.

Section 3. Meetings of the Committee. The Committee shall meet from time to time as necessary to perform its duties hereunder. 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 Section 8 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.

Section 4. No Waiver of Future Approval. 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.

Section 5. Compensation of Members. The members of the Committee shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of their duties hereunder.

Section 6. Inspection of Work. Inspection of work and correction 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 noncompliance within such sixty-day period, specifying the particulars of noncompliance, 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 noncompliance, the Committee shall notify the Board in writing of such failure. Upon Notice and Hearing, the Board shall determine whether there is a noncompliance 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 ruling. If the Owner does not comply with the Board ruling

within such period, the Board, at its option, may either remove the noncomplying improvement or remedy the noncompliance, 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 shall levy a Special Assessment against such Owner for reimbursement .

(d) If for any reason the Committee fails to notify the owner of any noncompliance within sixty (60) days after receipt of said written notice of completion from the Owner, the improvement shall be deemed to be in accordance with said approved plans.

Section 7. Non- Liability of Committee Members. Neither the Committee nor any member thereof, nor its duly authorized Committee representative 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 plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes.

Section 8. Variance. The Committee may authorize variances from compliance with any of the architectural provisions of this Declaration, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration may require. Such variances must be evidenced in writing, must be signed by at least two (2) members of the Board of Adjustment of Ogden City. 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 provision 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 use of the premises, including but not limited to zoning ordinances and requirements imposed by any governmental or municipal authority.

## ARTICLE IX

### Maintenance and Repair Obligation

Section 1. Structural-Maintenance Areas. No improvement, excavation or work which in any way alters the Structural Maintenance Areas from their natural or existing state on the date

any such area is conveyed by Declarant to a purchaser of a Unit shall be made or done by any person other than the Association or its authorized agents. The Association shall maintain, or provide for the maintenance in good order and repair of, and shall reconstruct, replace or refinish the improvements within the Structural Maintenance Areas.

**Section 2.** Maintenance Obligations of Owners. Subject to the duty of the Association to provide for maintenance as provided in Article IX, Section 3, of this Declaration, it shall be the duty of each Owner, at his sole cost and expense, subject to the provisions of this Declaration regarding Architectural Committee approval, to maintain, repair, replace and restore areas subject to his exclusive control, in a neat, sanitary and attractive condition. Areas subject to the exclusive control of the Owner shall be deemed to include, but not be limited to, the interior and all glass portions of the Owner's Dwelling Unit and the patio area of that individual Owner's Unit. In the event that any Owner shall permit any Improvement, which is the responsibility of such Owner to maintain, to fall into disrepair or not to be so maintained so as to create a dangerous, unsafe, unsightly or unattractive condition, or to otherwise violate this Declaration, the Architectural Committee shall have the right, but not the duty, upon fifteen (15) days' prior written notice to the Owner of such Unit, to correct such condition and to enter upon such Owner's Unit to make such repairs or to perform such maintenance and the cost thereof shall be charged to the Owner. Said cost shall be a Special Assessment and shall create a lien enforceable in the same manner as other assessments as set forth in this Declaration. The Owner shall pay promptly all amounts due for such work, and the costs and expenses of collection may be added, at the option of the Board of Directors, to the amounts payable by each Owner as Common Assessments.

**Section 3.** Maintenance Obligations of Association. Subject to the provisions of Section 2 of this Article, the Association shall maintain, or provide for the maintenance of all of the common area and all improvements thereon, including recreational facilities, in good order and repair, and shall likewise provide for the painting and minor repair and replacement as necessary of the Structural Maintenance Areas, commonly metered utilities, the interior and exterior of the recreation building, and any and all utility laterals and buildings. In addition to building maintenance, the Association shall provide all necessary landscaping and gardening to properly maintain and periodically replace when necessary the trees, plants, grass and other vegetation which is on the Common Area at the time that it is conveyed to the Association and on an Owner's Unit up to the foundation lines of the residential dwelling and up to the fences surrounding the enclosed patio areas. The Association shall further maintain, reconstruct, replace and refinish any paved surface in the Common Area. All of the foregoing obligations of the Association shall be discharged when and in such manner as the Board of Directors of the Association shall determine in their judgment to be appropriate.

The City of Ogden is granted the right to come on to the Common Areas for the purpose of repairing and maintaining utilities. In the event the Association fails in its obligations as provided for herein, the Association agrees to reimburse the City for all expenses expended in connection therewith to the extent same are not obligations of the City.

Section 4. Damage and Destruction Affecting Residences – Duty to Rebuild. If all or any portion of any Dwelling Unit is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner of said 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.

Section 5. 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 Unit 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 Unit in harmony with exterior design of other units. 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.

Section 6. Time Limitation. The Owner or Owners of any damaged Unit, 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 and complete reconstruction within one (1) year after 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, subject to the exemption of Declarant in Section 12 hereof:

Section 1. Single Family Residence. Subject to Section 3 of this Article X, each Unit shall be used as a residence for a single family and for no other purpose.

Section 2. 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 non-residential purposes; except Declarant, its successors or assigns, may use any portion of the Properties for a model Unit site, and display and sales office during the construction and sales period in accordance with Article II, Section I(h), of this Declaration, and excepting professional and administrative occupations without external evidence thereof, for so long as such occupations are in conformance with the City of Ogden ordinances and are merely incidental to

the use of the Dwelling Unit as a residential home.

**Section 3. Real Estate Business.** No Dwelling Unit, 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: PROVIDED, HOWEVER, that Declarant, or its designees, shall have the non-exclusive right, subject to the provisions of Article II, Section 1(h), of this Declaration, to use without additional cost the portions of any recreational building constructed on the Common Area for purposes of sales of Lots within the Properties, provided that such use does not unreasonably interfere with the use of any recreation facilities by the members of the Association. Furthermore, as to any Lots owned by Declarant, Declarant shall have the unrestricted right to maintain model units thereon for sales purposes.

**Section 4. Nuisances.** No noxious or offensive activity (including but not limited to the repair of motor vehicles) shall be carried on, in or upon any Unit or the Common Area, nor shall anything be done therein which may be or become an unreasonable annoyance or a nuisance to any other Owner. No loud noises or noxious odors shall be permitted on the 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 exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes), noisy or smokey vehicles, large power equipment or items which may unreasonably interfere with television or radio reception of any Owner in the Properties, shall be located, used or placed on any portion of the Properties, or exposed to the view of other Owners without the prior written approval of the Architectural Committee.

**Section 5. 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 Unit, without the prior written consent of the Architectural Committee, except one sign for each Dwelling Unit, of not more than three (3) feet by two (2) feet, plain white with black block letters, advertising the property for sale or rent, or except signs, regardless of size, used by Declarant, its successors or assigns, to advertised the Properties during construction and sale period. All signs or billboards and the conditions promulgated for the regulation thereof shall conform to the requirements of the City of Ogden ordinances.

**Section 6. Parking and Vehicular Restrictions.** No Owner of a Unit shall park, store or keep any vehicle except wholly within the parking area designated therefor, and any inoperable vehicle shall be stored only in covered carports. No Owner shall park, store or keep on any property or street (public or private) within the Properties any large commercial-type vehicle (dump truck, cement-mixer truck, oil or gas truck, delivery truck, and any other vehicular equipment, mobile or otherwise, deemed to be a nuisance by the Board), any recreational vehicle (camper unit, motor home, truck trailer, boat, mobile home or other similar vehicle), upon any uncovered parking space, so as to be visible from anywhere in the Properties, except as otherwise provided by the Board. The above excludes camper trucks up to and including three-quarter (3/4) ton when used for everyday-type transportation and subject to approval by the Board of

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Directors. No Owner shall conduct major repairs or major restoration of any motor vehicle, boat, trailer, aircraft or other vehicle upon any portion of any Unit or upon the Common Area. No recreational vehicle shall be stored or parked in public view.

Section 7. Animal Restriction. No animals, livestock, reptiles or poultry of any kind shall be raised, bred or kept in any Unit or on 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 one dog no larger than twenty (20) pounds 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, 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 an enclosure, an enclosed patio or on a leash being held by a person capable of controlling the animal. The enclosure must be so maintained that the animal cannot escape therefrom and shall be subject to the approval of the Architectural Committee. Should any animal belonging to an Owner be found unattended out of the enclosure and not being held on a leash by a person capable of controlling the animal, such animal may be removed by Declarant (for so long as it owns any interest in the Properties) or a person designated by Declarant to do so, to a pound under the jurisdiction of the local municipality in which the properties are situated and subject to the laws and rules governing said pound, or to a comparable animal shelter. Furthermore, any Owner shall be absolutely liable to each and all remaining Owners, their families, guests, tenants and invitees, for any unreasonable noise or damage to person or property caused by any animals brought or kept upon the Properties by an Owner or by members of his family, his tenants or his guests; and it shall be the absolute duty and responsibility of each such Owner to clean up after such animals which have used any portion of the Common Area.

Section 8. Trash. No rubbish, trash or garbage or other waste material shall be kept or permitted in any Unit or upon 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. 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.

Section 9. View Obstructions. No fence, hedge, wall or other dividing instrumentality over six feet (6') in height measured from the ground on which it stands shall be constructed or maintained on any Lot, except that Declarant may vary or exceed said height or location of any

fence in accordance with its architectural plans. Each Owner by accepting a deed to a Unit hereby acknowledges that any construction by Declarant may impair the view of such Owner and hereby consents to such impairment.

Section 10. Temporary Buildings. No outbuilding, basement, tent, shack, shed or other temporary building improvement of any kind shall be placed upon any portion of the Properties either temporarily or permanently. No garage, trailer, camper, motor home or recreation vehicle shall be used as a residence in the Properties, either temporarily or permanently.

Section 11. Area Facilities. Nothing shall be altered or constructed in or removed from the Common Area except upon the written consent of the Association.

Section 12. Declarant Exemption. Declarant or its successors or assigns will undertake the work of constructing Units included within the Properties. The completion of that work and sale, rental and other disposal of Dwelling Units is essential to the establishment and welfare of said property as a residential community. In order that said work may be completed and the Properties be established as a fully occupied residential community as rapidly as possible, no Owner nor the Association shall do any thing to interfere with, and nothing in this Declaration shall be understood or construed to:

(a) Prevent Declarant, its successors or assigns, or its or their contractors or subcontractors, from doing in any Unit owned by them whatever they determine to be necessary or advisable in connection with the completion of said work, including without limitation the alteration of its construction plans and designs as Declarant deems advisable in the course of development; or

(b) Prevent Declarant, its successors or assigns, or its or their representatives, from erecting, constructing and maintaining as to any Unit, or portion thereof, owned or controlled by Declarant, or its successors or assigns or its or their contractors or subcontractors, such structures as may be reasonably necessary for the conduct of its or their business of completing said work and establishing the Properties as a residential community and disposing of the same in Lots by sale, lease or otherwise; or

(c) Prevent Declarant, its successors and/or assigns, or its or their contractors or subcontractors, from conducting on any Lot, or any portion thereof, owned or controlled by Declarant, or its successors or assigns, its business of developing, subdividing, grading and constructing Dwelling Units and other improvements in the Properties as a residential community and of disposing of Dwelling Units thereon by sale, lease or otherwise; or

(d) Prevent Declarant, its successors and/or assigns or its contractors or subcontractors, from maintaining such sign or signs on Property owned by or controlled by it as may be necessary in connection with the sale, lease or other marketing of Dwelling Units in the Properties; or



(e) Prevent Declarant, at any time prior to acquisition of title to a Unit in the Plat by a purchaser from Declarant, to establish in that Plat additional licenses, reservations and rights-of-way to itself, to utility companies, or to others as may from time to time be reasonably necessary to the proper development and disposal of the Properties.

Section 13. Outside Installations. No radio station or shortwave operators of any kind shall operate from any 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.

Section 14. 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, 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 law.

Section 15. Drilling. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind, shall be permitted upon or in the project, nor shall oil wells, tanks, tunnels or mineral excavations or shafts be permitted upon the surface in the project or within five hundred feet (500') below the surface of the Properties. No derrick or other structure designed for use in boring for water, oil or natural shall be erected, maintained or permitted.

Section 16. Further Sublease. An Owner shall have the right (1) to rent or lease all or any portion of his Lot by means of a written lease or rental agreement subject to the restrictions of this Declaration, so long as the Unit is not leased for transient or hotel purposes; (2) to sell his Unit; or (3) to transfer or sell any Unit to more than one person to be held by them as tenants-in-common, joint tenants, tenants by the entirety or as community property. 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 Unit to comply with the terms of this Declaration or the Bylaws of the Association shall constitute a default under the lease.

Section 17. 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 the purposes hereof, "established" drainage is defined as the drainage which exists at the time the overall grading of any plat is completed by Declarant, or that which is shown on any plans approved by the Architectural committee, which may include drainage from the Common Arca over any Unit in the Properties.

Section 18. Use Compliance with Zoning. Notwithstanding the provisions of this Declaration, all uses must comply with City zoning ordinances.

## ARTICLE XI

### Party Fences and Party Walls

Section 1. No Party Fences. Each fence which is built as part of the original construction shall be in the Common Area. The Association shall be responsible for reasonable maintenance thereof, as provided herein. Such fences shall not be considered to be party fences as herein used.

Section 2. General Rules of Law to Apply to Party Fences. The Owners shall be at liberty to build fences, by agreement among themselves, between adjoining Units, with the prior approval of the Architectural Committee. These fences shall be called "Party Fences" and shall be subject to this Article XI. To the extent not inconsistent with the provisions of this Article XI, the general rules of law regarding Party Fences and liability for property damage due to negligence or willful acts or omissions shall apply thereto. The Owner of each Lot adjoining a Party Fence shall be an "Owner" of the fence for purposes of this Article.

Section 3. General Rules of Law to Apply to Party Walls. Each wall which is built as a part of the original construction of the dwelling Units upon the Properties and placed on the dividing line of the Units shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article XI, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. The Owner of each Unit adjoining a Party Wall shall be an "Owner" of the wall for purposes of this Article.

Section 4. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a Party Fence and Party Wall shall be shared by the Owners in proportion to their ownership thereto.

Section 5. Destruction by Fire or Other Casualty. If a Party Fence or a Party Wall is destroyed or damaged by fire or other casualty, any Owner thereof may restore it, and the other Owners thereof shall contribute to the cost of restoration thereof in proportion to such ownership without prejudice subject, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 6. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article XI shall be appurtenant to the land and shall pass to such Owner's successors-in-interest.

Section 7. Arbitration. In the event any dispute arises concerning a Party Fence or a Party Wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

**FIRST AMENDMENT TO  
DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
AND RESERVATIONS OF EASEMENTS  
FOR SUNPOINTE COVE,  
A CONDOMINIUM**

The Declaration recorded in the office of the Weber County Recorder on February 15, 2000, in Book 2058, Pages 319 through 353 inclusive, as Entry No. 1690039, is amended by the Successor/Owner, Durling Development Corporation, pursuant to its 100% ownership of the property, as follows:

ARTICLE XI Section 3 is amended to read as follows:

Section 3: General Rules of Law to Apply to Party Walls. Each wall which is built as a part of the original construction of the dwelling units upon the properties and placed on the dividing line of units shall constitute a party wall commonly owned by the Association and part of the structural portion of the development as a responsibility of the Association and the Common Ownership. To the extent not inconsistent with the provisions of this Article XI, the general rules of law regarding party walls and liability for property damage due to negligence or wilful acts or admissions shall apply thereto.

ARTICLE XIII Sections 1, 2, and 3 are amended to read as follows:

Section 1. Common Area and Structural Portions of Units. The Association shall keep all buildings, improvements and fixtures of the Common Area and the Unit Structural portion insured against loss or damage by fire for the full insurance replacement costs thereof, and maintain 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 as the owner and beneficiary of such insurance. The insurance coverage with respect to the Common Area and Structural Unit shall be written in the name of, and the proceeds thereof 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 Common Assessments made by the Association.

Section 2: Insurance Obligations of Owners. Each Owner shall insure the contents of his/her 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 mortgage of the residence. Each Unit Owner shall also maintain an umbrella liability policy.

Section 3: 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

All of Sunpoint Cove Condominiums  
12-172-0001-0027

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DOUG CROFTS, WEBER COUNTY RECORDER  
16-OCT-00 446 PM FEE \$31.00 DEP JFM  
REC FOR: AVIS.TITLE

the Association, the Association shall repair or replace the facility from 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 damaged or destroyed, the Association may make a Reconstruction Assessment against all Unit Owners to cover the additional costs of repair or replacement not covered by the insurance proceeds, in addition to any other Common Assessments made against such Unit Owners, 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 Unit Owners, such proportion based upon the original base sales price of each improved Unit 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 Unit is so encumbered. Further, the Association shall have the right to enter any Unit for emergency repairs which may impact other Units and/or to perform structural maintenance and repair.


IN WITNESS WHEREOF, the undersigned being the President of Durling Development Corporation, has caused these presents to be executed this 16<sup>th</sup> day of October, 2000.

DURLING DEVELOPMENT CORP.

BY: *Christopher R. Durling*  
President

STATE OF UTAH            )  
  )ss:  
COUNTY OF WEBER        )

On the 16<sup>th</sup> of October, 2000, personally appeared before me, Christopher R. Durling, who being by me duly sworn, did say that he is the President of Durling Development Corporation, that he has the requisite authority to execute the foregoing on behalf of the Corporation, and the said Christopher R. Durling duly acknowledged to me that he executed the same.

 Notary Public  
**WILLIAM AVIS**  
1724 EAST 5600 SOUTH  
OGDEN, UT 84403  
My Commission Expires  
MARCH 29, 2004  
STATE OF UTAH

*William Avis*  
NOTARY PUBLIC

## ARTICLE XII

### Damage or Destruction to Common Area

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 Dollars (\$10,000) 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 Unit 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 Dollars (\$10,000.00) 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 damage and to raise the necessary funds over the insurance proceeds by levying equal Reconstruction Assessments against all Units, (2) to rebuild and restore in a way which utilizes all available insurance proceeds and an additional amount not in excess of Ten Thousand Dollars (\$10,000.00), 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 Units 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 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 Unit, 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 Unit and may be \_\_\_\_\_ collected as provided herein for the collection of Common Assessments .

ARTICLE XIII

Insurance

Section 1. Common Area. The Association shall keep all buildings, improvements and fixtures Common Area insured against loss or damage by fire for the full insurance replacement cost thereof, and maintain 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 as the owner and beneficiary of such insurance. The insurance coverage with respect to the Common Area shall be written in the name of, and the proceeds thereof 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 Common Assessments made by the Association.

Section 2. Insurance Obligations of Owners. Each Owner shall insure his 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. Each non-participating Owner shall, within thirty (30) days after recordation of the conveyance of his Unit from Declarant and thereafter at least ten (10) days prior to the expiration, termination, cancellation or modification of any existing policy, furnish to the Association duplicate copies of policies or certificates thereof showing that such insurance is currently in force certified by the insurance company or by its duly authorized agent. All such policies shall contain a provision that the same shall not be canceled or terminated except upon at least thirty (30) days' written notice to the Association.

Section 3. 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 facility from 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 damaged or destroyed, the Association may make a Reconstruction Assessment against all Unit Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other Common Assessments made against such Unit Owners, 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 Unit Owners, such proportion based upon the original base sales price of each improved Unit 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 Unit is so encumbered.

**FIRST AMENDMENT TO  
DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
AND RESERVATIONS OF EASEMENTS  
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ARTICLE XI Section 3 is amended to read as follows:

Section 3: General Rules of Law to Apply to Party Walls. Each wall which is built as a part of the original construction of the dwelling units upon the properties and placed on the dividing line of units shall constitute a party wall commonly owned by the Association and part of the structural portion of the development as a responsibility of the Association and the Common Ownership. To the extent not inconsistent with the provisions of this Article XI, the general rules of law regarding party walls and liability for property damage due to negligence or wilful acts or admissions shall apply thereto.

ARTICLE XIII Sections 1, 2, and 3 are amended to read as follows:

Section 1. Common Area and Structural Portions of Units. The Association shall keep all buildings, improvements and fixtures of the Common Area and the Unit Structural portion insured against loss or damage by fire for the full insurance replacement costs thereof, and maintain 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 as the owner and beneficiary of such insurance. The insurance coverage with respect to the Common Area and Structural Unit shall be written in the name of, and the proceeds thereof 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 Common Assessments made by the Association.

Section 2: Insurance Obligations of Owners. Each Owner shall insure the contents of his/her 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 mortgage of the residence. Each Unit Owner shall also maintain an umbrella liability policy.

Section 3: 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

All of Sunpoint Cove Condominiums  
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REC FOR: AVIS.TITLE

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IN WITNESS WHEREOF, the undersigned being the President of Durling Development Corporation, has caused these presents to be executed this 16<sup>th</sup> day of October, 2000.

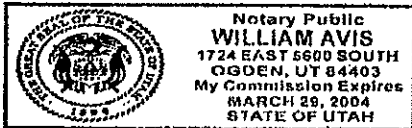
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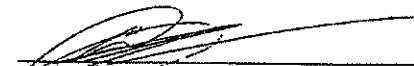
BY:

  
\_\_\_\_\_  
President

STATE OF UTAH            )  
                                  )ss:  
COUNTY OF WEBER        )

On the 16<sup>th</sup> of October, 2000, personally appeared before me, Christopher R. Durling, who being by me duly sworn, did say that he is the President of Durling Development Corporation, that he has the requisite authority to execute the foregoing on behalf of the Corporation, and the said Christopher R. Durling duly acknowledged to me that he executed the same.



  
\_\_\_\_\_  
NOTARY PUBLIC



**Section 4. Waiver of Subrogation.** As to each policy of insurance maintained by the Association, which will not be voided or impaired thereby, the Association hereby waives and releases all claims against the Board, the Owners, the Manager, Declarant, and the agents and employees of each of the foregoing with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but only to the extent that insurance proceeds are received in compensation for such loss.

**Section 5. 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 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 insured. Such insurance shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of a Unit Owner because of negligent acts of the Association or other unit owners.

**Section 6. Fidelity Coverage.** Association shall obtain fidelity coverage against dishonest acts on the part of directors, managers, trustees, employees or volunteers responsible for handling funds collected and held for the benefit of the Unit Owners. The fidelity bond or insurance must name the Association as the named insured and shall be written in an amount sufficient to provide protection which is in no event less than one and one half times the insured's estimated annual operating expenses and reserves. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.

**Section 7. Other Insurance in General.** The Association may also obtain, through the Board, Workmens Compensation Insurance and other liability insurance as it may deem desirable, insuring each Unit Owner and the Association, Board of Directors and Manager, from liability in connection with the Common Area, the premiums for which are common expenses included in the Common Assessments made against the Owners. Such insurance policies shall have severability of interest clauses or endorsements which shall preclude the insurer from denying the claim of a Unit Owner because of the negligent acts of the Association or other dwelling unit owners.

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

Notwithstanding any other provisions herein, the Association shall continuously maintain in effect such casualty, flood and liability and bonds and other insurance meeting the requirements for condominium projects established by the Federal National Mortgage Association (FNMA), the Government National Mortgage Association (GNMA), and the Federal Home Loan Mortgage Corporation (FHLMC), so long as there are any mortgages on any of the properties.

ARTICLE XIV

Mortgage Protection Clause

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) and the Federal National Mortgage Association (FNMA) to participate in the financing of the sale of Units within the Properties, the following provisions are added hereto (and to the extent these added provisions conflict with any other provisions of the Declaration, these added provisions shall control) :

(a) Each first Mortgagee of a mortgage encumbering any Unit, at its written request, is entitled to written notification from the Association of any default by the Mortgagor of such Unit 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) Any "right of first refusal" contained in this Declaration shall not impair the rights of first mortgagee to:

(1) foreclose or take title to a Unit pursuant to the remedies provided in the Mortgage, or

(2) accept a deed (or assignment) in lieu of foreclosure in the event of default by a Mortgagor, or

(3) interfere with a subsequent sale or lease of the Unit so acquired by the Mortgagee.

(c) Any first Mortgagee who obtains title to a Unit pursuant to the remedies provided in the Mortgage or foreclosure of the Mortgage will not be liable for such Unit's unpaid dues or charges which accrue prior to the acquisition of title to such Unit by the Mortgagee.

(d) Unless at least two-thirds (2/3) of the first Mortgagees (based upon one vote for each first mortgage owned) and owners (other than the Declarant) of the individual Units in the Properties have given their prior written approval, the Association or Owners shall not be entitled to:

(1) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the common property owned, directly or indirectly, by the Association or Owners (the granting of easements for public utilities or for other public purposes consistent with the intended use of such common property by the Association or Owners shall not be deemed a transfer within the meaning of this clause);

(2) change the method of determining the obligations, assessments, dues or other charges which may be levied against a Unit owner;

(3) by act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Dwelling Units, the exterior maintenance of Dwelling Units, the maintenance of the common property, party walks or common fences and driveways, or the upkeep of lawns and plantings in the Properties;

(4) fail to maintain fire and extended coverage on insurable common area property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost); or

(5) use hazard insurance proceeds for losses to any common area property for other than the repair, replacement or reconstruction of such common area property.

(e) First Mortgagees of Units may, jointly or singly, pay taxes or other charges which are in default and which may have become a charge against any common area property and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such common property and first Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association, or Owners. Entitlement to such reimbursement is reflected in an agreement in favor of all first Mortgagees of Units by the Association duly executed by the Association and Owners.

(f) First Mortgagees, pursuant to their mortgages shall have priority over Unit Owners in case of a distribution of insurance proceeds or condemnation awards for losses to or taking of Common Area property.

(g) First Mortgagees shall have the right to examine the books and records of the Association during normal business hours.

(h) 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 Dollars (\$10,000.00) and as soon as the Board learns of any threatened condemnation proceedings or proposed acquisition of any portion of the Properties.

(i) The Association dues or charges shall include an adequate reserve fund for maintenance, repairs and replacement of those elements of the common property that must be replaced on a periodic basis and are payable in regular installments rather than by special

assessments.

(j) All first Mortgagees, upon request, are entitled to written notification from the Association of any default in the performance by the individual Lot borrowers of, any obligation under the Declaration, Articles of Incorporation, or Bylaws which is not cured within sixty (60) days.

(k) Any agreement for professional management of the Properties or any other contract providing for services of the Declarant may not exceed three (3) years; any such agreement must provide for termination by either party without cause and without payment of any termination fee on ninety (90) days or less of written notice.

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 Units. 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 Bylaws of the Association will be amended in such a manner that the right of any first Mortgagee will be adversely affected.

#### ARTICLE XV

##### General Provisions

Section 1. 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 successors-in-interest of the Association. Any judgment rendered in any action or proceeding pursuant hereto shall include a sum for attorney's 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 for value on any Unit or the improvements therein, 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.

Section 2. 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.

Section 3. Term. The covenants and restrictions of the Declaration shall run with and bind the Properties, and shall inure to the benefit of and be enforceable by the Association of the Owner of any Unit subject to this Declaration, their respective legal representatives, heirs, successors and assigns, perpetually so long as there are mortgages against the Properties. Thereafter, the Owners of a majority of the Units may sign and have recorded an instrument in writing agreeing to change such covenants and restrictions in whole or in part.

Section 4. 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 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.

Section 5. Amendments. 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 seventy-five (75%) percent of the voting power of each class of Members; provided, however, that the prior written approval of at least seventy-five percent (75%) of all first Mortgagees must be obtained also, before Article XIV may be amended. Notwithstanding the foregoing, Declarant shall have the right to terminate or modify this Declaration by recordation of a supplement hereto setting forth such termination or modification in accordance with the laws of the State of Utah and subject to Article XV, Section 6 of this Declaration. For purposes of this

Declaration, the sale shall be deemed to be the date upon which a deed conveying a Unit is recorded in the Office of the Weber County Recorder.

Provided further, this Declaration shall not be amended in such a manner that the rights of any first Mortgagee will be adversely affected. Appointment and removal of association officers shall be as provided for in the adopted by-laws and no amendment to this Declaration not consented to by all unit owners may increase the powers or responsibilities or increase the scope of said authorization, and no such authorization shall be valid after the first to occur of the following:

- (a) expiration of the time limit set by this declaration of three (3) years; or
- (b) after units to which three-fourths (3/4) of the undivided interest in the common areas appertain have been conveyed.

Section 6. 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 otherwise specifically provided in the Declaration or on the plat.

Section 7. Constructive Notice and Acceptance. Every person who owns, occupies or acquires any right, title, estate or interest in or to any Unit or 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.

Section 8. Reservation of Easements. Reciprocal easements are hereby reserved for the benefit of Unit Owners for the control, maintenance and repair of the utilities of adjoining Unit Owners. Declarant expressly reserves for the benefit of all of the real property in the Properties, and the Owners, reciprocal easements of access, ingress and egress, and over the Common Area, for the use and enjoyment of the Units in accordance with this Declaration, including without limitation, for installation and repair of utility services, for drainage over, across and upon the Properties, for maintenance and repair of any dwelling. Such easements may be used by Declarant, its successors, 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 Unit and the Common Area. No Owner of a Unit shall interfere with the established drainage pattern of the Properties. 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. Declarant further expressly reserves for the benefit of the Association, its agents and employees, easements of access, ingress and egress, as to Units and the 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.


Section 9. Notices. Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered 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 Postal Service, 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.

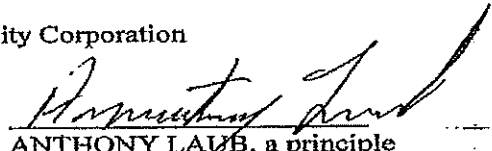
Section 10. No Representations or Warranties. No representations or warranties of any kind, express or implied, have been given or made by Declarant or its agents or employees in connection with the Properties or any portion of the Properties, or any improvement thereon, its physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof as a planned development, except as specifically and expressly set forth in this Declaration and except as may be filed by Declarant from time to time with the Utah Land Sales Practices Act, the Veterans' Administration, the Federal Housing Administration or the City of Ogden.

IT IS HEREBY ACKNOWLEDGED and understood that this group dwelling and Condominium project has been granted a Conditional Use Permit by the City of Ogden based upon its compliance with Ogden City Ordinances and the approved development plans. Substantive changes to the Declaration, the "plat", the Common Areas, building design and materials, and the approved site plan may require an amendment to the Conditional Use Permit and failure to seek such amendment may result in an ordinance violation or a revocation of the Conditional Use Permit.

Declarant has executed this Declaration on the date first above written.

SUNPOINTE COVE, L.L.C., a Utah Limited Liability Corporation

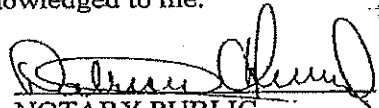
  
LARRY BUTTARS, a principle  
STATE OF UTAH

  
ANTHONY LAUB, a principle

)  
) SS:  
)  
COUNTY OF WEBER

On the 3<sup>rd</sup> day of February, 2000, personally appeared before me Larry Buttars and Anthony Laub, duly authorized principles of the limited liability corporation, who being by me duly sworn, did say that the foregoing instrument was signed by them as Declarant and owner of the real estate to which this Declaration relates and so acknowledged to me.



  
NOTARY PUBLIC

E# 1690039 BK2058 PG353

