

# **REVISED DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS FOR THE COLONIES PLANNED DEVELOPMENT**

This Revised Declaration of Covenants, Conditions and Restrictions for the COLONIES PLANNED DEVELOPMENT (the "Declaration"), Amended and Revised this 15th day of October, 2002, by approval of 75% or more of the members of The Colonies Planned Development Homeowners Association, Inc., hereafter "Declarant", shall amend and revise the original Declaration of Covenants, Conditions and Restrictions recorded October 20, 1981, Entry No. 030322, in Book 1943, at pages 835-855, for and pertaining to The Colonies Planned Unit Development, The Colonies Planned Unit Development Phase III, and The Colonies Planned Unit Development Phase 4.

Such land and improvements thereon being hereafter collectively referred to as the "Project", and property being located in Orem City, County of Utah, State of Utah, and being more particularly described as follows:

The Colonies, A Planned Unit Residential Development:

Commencing at a point located North 89°56'37" East along the 1/4 section line 2244.12 feet and South 211.01 feet from the West 1/4 corner, Section 10, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence North 90°00' East 450.24 feet; thence South 00°20'59" East 90.03 feet, thence 36.77 feet along the arc of a curve which bears South 08°46'41" East 36.64 feet, thence 48.58 feet along the arc of a curve which bears South 9°15'11" East 48.43 feet, thence South 01°17'58" East 250.18 feet, thence North 89°52'58" West 465.22 feet; thence North 00°37'31" West 423.23 feet to the point of beginning. Basis of bearing, North 89°56'37" East along the 1/4 section line.

The Colonies — A Planned Unit Residential Development, Phase III:

Commencing North 89°56'37" East, along the Section Line, 1991.86 feet and South 5.69 feet from the West Quarter Corner of Section 10, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence as follows: An arc having a length of 250.14 feet (chord bearing South 88°47'32" East 250.13 feet along 800 North frontage road); thence South 00°37'31" East 302.83 feet; thence South 89°52'03" West 250.01 feet along Raintree Plat "A"; thence North 00°37'31" West 308.68 feet along Kingsbury Plat "A" to the point of beginning. Basis of bearing, North 89°56'37" East along the 1/4 section line.

The Colonies— a Planned Unit Residential Development, Phase 4:

Commencing at a point located North 89°56'36" East along the 1/4 section line, 2694.90 feet and South 299.99 feet from the West 1/4 corner of Section 10, Township 6 South, Range 2 East, Salt Lake Base and Meridian; Thence North 89°56'36" East 298.23 feet; thence South 18°23'24" 224.02 feet; thence South 01°41'41" East 107.39

feet; thence South 89°56'36" West 353.37 feet; thence North 01°17'58" East 234.53 feet; thence along the arc of 175.00 foot radius curve to the left 48.58 feet (chord bears North 09°15'10" West 48.43 feet); thence along the arc of a 125.00 foot radius curve to the right 36.78 feet (chord bears North 08°46'41" West 36.64 feet); thence North 00°20'59" West 1.49 feet to the point of beginning. Basis of bearing— North 89°56'36" East along the 1/4 section line.

Whereas the Declarant desires to provide for the preservation of the values and amenities in said Project and for the maintenance of opens spaces; and to this end, desires to subject the real property described herein to the covenants, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said property and the subsequent owners thereof; and

Whereas the Declarant has deemed it desirable, for the efficient preservation of the values and amenities in said Project, to create an Association to which all will be delegated and assigned the powers and duties of maintaining and administering and enforcing the within covenants and disbursing the charges and assessments hereinafter created; and

Whereas the Declarant has formed The Colonies Planned Development Homeowners Association.

NOW, THEREFORE, the Declarant hereby declares that all of the properties described as belonging to and identified as part of The Colonies Planned Unit Residential Development, The Colonies Planned Unit Residential Development Phase III, and The Colonies Planned Unit Residential Development Phase 4, in Orem City, County of Utah, State of Utah, as identified and described on the official Plats thereof, which Plats have been duly recorded in the office of the Utah County Recorder, shall be held, sold and conveyed subject to the following easements, restrictions, and covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

#### ARTICLE I DEFINITIONS

---

1.1 Articles. Shall mean and refer to the Articles of Incorporation of the Association, which are filed in the Office of the Division of Corporations and Commercial Code, Utah Department of Commerce, as may be amended from time to time.

1.2 Association. Shall mean and refer to The Colonies Planned Development Homeowners Association, Inc., and its successors and assigns.

1.3 Board of Directors. Shall mean the Governing Board of the Association.

1.4 Bylaws. Shall mean and refer to the Bylaws of the Association as adopted by the Board of Directors of the Association, and as they may be amended from time to time.

1.5 Common Areas. Shall mean all portions of the Development except the Lots and Units, and shall include all property owned by the Association for the common use and enjoyment of the Owners such as all private undedicated roadways, driveways, parking, amenities, open spaces,

landscaping, structural common areas, if any, and the like, together with all easements appurtenant thereto, as reflected in the respective Plats. Common Areas shall also include.

(a) All structures, if any, intended and used for the common good of all owners, including parking covers.

(b) All installations for and all equipment connected with the furnishings of the Project with Utility Services, such as electricity, gas, water and sewer.

(c) The Project outdoor lighting, fences, sidewalks, and unassigned parking spaces

1.6 Common Assessment. Shall mean an assessment levied to offset Common Expenses.

1.7 Common Expenses. Shall mean any of the following:

(a) The expenses of, or reasonable reserves for, the maintenance, management, operation, repair and replacement for the Common Areas, including the cost of unpaid Special Assessments.

(b) The cost of capital improvements to the Common Areas which the Association may from time to time authorize.

(c) The expenses of management and administration of the Association, including compensation paid by the Association to a manager, accountant, attorney or other employees or agents.

(d) Any other item or items designated by this Declaration or the Bylaws of the Association to be Common Expenses, and any other expenses reasonably incurred by the Association on behalf of all Owners.

1.8 Development or Planned Development. Shall mean the planned unit development known as The Colonies as it exists at any given time, and shall include an estate in real property consisting of the separate ownership of lots and the fee ownership of an undivided interest as a tenant in common of the Common Areas.

1.9 Limited Common Areas. Shall mean those portions of the Common Areas which are limited to and reserved for the exclusive use of individual owners, specifically the designated parking spaces.

1.10 Lot. Shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties within the Development with the exception of the Common Area.

1.11 Map or Plat. Shall mean the Plat Map of the Colonies Planned Development recorded at the County Recorder's Office, County of Utah, State of Utah.

1.12 Member. Shall mean a member of the Association.

1.13 Owner. Shall mean and refer to the owner of record (in the County Recorder's Office, County of Utah, State of Utah), whether one or more persons or entities, of a Unit/lot, and any contract purchaser of any Unit/lot. No Mortgagee nor any trustee or beneficiary of a deed of trust or trust deed shall be an owner unless such party acquires fee title pursuant to foreclosure or sale or

conveyance in lieu thereof. Multiple owners of a particular Unit/lot shall be jointly and severally liable for all responsibilities of an Owner.

1.14 Project. Shall have the same meaning as “Development” or “Planned Development.”

1.15 Rules. Shall mean the Rules governing the use of the Common Areas and the recreational facilities thereon duly adopted by the Association.

1.16 Special Assessment. Shall mean an assessment for Special Expenses.

1.17 Special Expenses. Shall mean any of the following:

(a) The expenses incurred by the Association for the repair of damage or loss to the Common Areas or the property of other Owners caused by the act or neglect of an Owner which is not covered by insurance.

(b) The expenses of repair or reconstruction of a building damaged or destroyed by fire or other casualty for which there shall be no insurance coverage and the repair or reconstruction of which will directly benefit less than all of the Owners.

(c) Any other item or items designated by other provisions of the Declaration or by the By-Laws of the Association to be Special Expenses.

1.18 Unit. Shall mean a structure which is designed, constructed and intended for use or occupancy as a single family residence on a Lot, together with all improvements located on the same Lot and used in conjunction with such residence, including anything located within or without said Unit but designated and designed to serve only that Unit, such as patios, decks, appliances, electrical receptacles and outlets, air conditioning, compressors and other air conditioning apparatus.

## ARTICLE II

### PROPERTY RIGHTS

2.1 Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

(a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area.

(b) The right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his lot remains unpaid; and for a period not to exceed 60 days for any infraction of its Rules.

(c) The right of the Association to dedicate 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 or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by 2/3rds of the Owners has been recorded.

2.2 Delegation of Use. Any Owner may designate his right of enjoyment to the Common Areas to the members of his family who reside with him in his unit, or to his tenants or contract

purchasers who reside in his unit. The rights and privileges of such designee shall be subject to suspension in the same manner and to the same extent as those of the Owner.

2.3 Owners Rights Within Unit. An Owner shall have the right to change coverings, (including carpeting, tile, wallpaper, paint and so forth) of the walls, floors, and ceilings of his Unit without the permission of the Association. Such coverings shall be the property of an Owner and may be removed from his Unit by such Owner, provided that such removal does not cause damage to the Common Areas.

2.4 Fixtures and Appliances. An owner shall be the Owner of the light fixtures, plumbing fixtures, washing machine, clothes dryer, refrigerator, stove, oven, dishwasher and cabinets located within his Unit. Such fixtures and appliances may be removed by the Owner, provided that such removal does not cause damage to the Common Areas.

### ARTICLE III

#### PROJECT ADMINISTRATION

3.1 Administration of Project. The Project shall be administered by the Association, acting by and through its Board of Directors, who shall be elected in accordance with the Articles of Incorporation and the By-Laws of the Association, and whose duties will be governed by the terms of the Utah Nonprofit Corporation and Cooperative Association Act, this Declaration, and the Articles of Incorporation and By-Laws of the Association. The Association may employ a professional management agent to perform, subject to the supervision of the Board of Directors, such duties and services as the Board of Directors shall direct, including, but not limited to, management of the Common Areas and the collection of and accounting for assessments made by the Association.

3.2 Rules. The Association shall have the power to establish and enforce compliance with the Rules and to amend same from time to time. A copy of such Rules shall be delivered or mailed to each Member promptly upon the adoption thereof.

3.3 Common Utilities. The Association shall be responsible for the monthly payment of the common utility services that are provided by Public Utilities, specifically the electricity, sewer and water assessments. The Association shall prorate those costs to the Unit Owners on an equitable basis.

### ARTICLE IV

#### MEMBERSHIP AND VOTING RIGHTS

4.1 Membership. Each Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from the ownership of the lots. Ownership of a lot shall be the sole qualification for membership. The membership held by an Owner shall not be transferred, pledged or alienated in any way, except upon the sale of such lot, and then only to the purchaser of such lot.

4.2 Class of Voters. Members shall all be Owners, and shall be entitled to one vote for each lot owned.

4.3 Voting-Multiple Ownership. In the event there is more than one Owner of a particular lot, the vote relating to such lot shall be exercised as such Owners may determine among themselves.

4.4 Suspension of Voting Rights. The voting rights of any Member shall automatically be suspended during any period in which he or she shall be delinquent in the payment of assessments due the Association and for any period during which his or her right to use the recreational facilities upon the Common Areas shall have been suspended by the Board Directors.

## ARTICLE V

### MAINTENANCE OF PROJECT

5.1 Duties of Association. The Association shall have the responsibility of maintaining, repairing, replacing and otherwise keeping in a first-class condition all portions of the Project not required by this Declaration to be maintained by the Owners, specifically the Common Areas.

5.2 Duties of Owners. An Owner shall be obligated to repair, replace and maintain in good repair and condition (a) the fixtures (as hereinafter defined) within his Unit; (b) the finished interior surfaces of the perimeter walls, ceilings, floors, doors and windows within his Unit; (c) the exterior facades, foundations and roof of the Units. No Owner shall disturb or relocate any Utilities (as hereinafter defined) running through his lot nor shall any Owner do any act which will impair the structural soundness of the Building or impair any easement herein granted or reserved.

(a) Definition of Utilities. By the term "Utilities" as used in this Article is meant the lines, wires, conduits or systems located within the area of the Project and which provide normal utility services to the Project, such as electrical, water, sewer, telephone and other similar services.

(b) Definition of Fixtures. By the term "Fixtures" as used in this Article is meant the fixtures and equipment within a Unit commencing at a point where they connect with the Utilities.

5.3 Exterior Maintenance. In the event an owner of any Lot in the Properties shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Board of Directors, the Association shall have the right, through its agents and employees, to enter upon said parcel and to repair, maintain, and restore the Lot and the exterior of the Unit and any other improvements erected thereon. The cost of such exterior maintenance shall be assessed to the Owner as a Special Expense, and shall be added to and become part of the assessment to which such Lot is subject.

## ARTICLE VI

### ASSESSMENTS

6.1 Each owner of any Lot by acceptance of a deed therefor whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them, or

unless the continuing lien created by this paragraph has been duly recorded in the office of the Utah County Recorder, prior to the passing of title, and specifically identifies the lot to which the lien is attached.

6.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Development and for the improvement and maintenance of the Common Area, and the Units situated upon the Development.

6.3 Annual Budget. Not less than thirty (30) days prior to the commencement of each fiscal year (which shall commence on the first day of January), the Board of Directors shall establish an annual budget for such fiscal year, including therein all anticipated items of Common Expense together with a reasonable reserve for contingencies.

6.4 Annual Common Assessment. By the adoption of the annual budget by the Board of Directors there shall be established an annual Common Assessment for the payment of which each Owner shall be personally liable. Each Owner shall pay his or her share in even monthly installments of one-twelfth (1/12) thereof on the first day of each month during the fiscal year. The first monthly installment, or pro rated portion thereof, of such annual Common Assessment shall be due and payable by an Owner upon acquiring ownership or title to a lot or unit. Each Owner may be required to deposit and to maintain up to three (3) monthly installments of the Owner's share of the annual Common Assessment, for purchase of equipment or supplies and for working capital. Such advance payment shall not relieve an Owner from making the regular monthly payment. Upon the sale of a lot, the Owner or owners thereof shall be entitled to a credit from the Owner's deposit for any unused portion thereof. If the annual budget is not adopted as herein required, the previous fiscal year monthly payment shall continue to be due until such time as the annual budget for the current year is established, at which time the annual Common Assessment shall become retroactive to the commencement of such current fiscal year.

6.5 Maximum Annual Assessments. The maximum annual assessment shall be shall be determined as follows:

(a) From and after January 1 of each year, the maximum annual assessment may be increased each year not more than 5% above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of each year the maximum annual assessment may be increased above the 5% by a vote of two-thirds (2/3) of members who are voting in person or by proxy, subject to the quorum requirements of Paragraph 6.7 of this Article VI., at a meeting duly called for this purpose.

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

6.6 Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special 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 upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of members who are voting in person or by proxy, subject to the quorum requirements of Paragraph 6.7 of this Article VI., at a meeting duly called for this purpose.

6.7 Notice and Quorum for Any Action Authorized Under Sections 6.5 and 6.6. Written notice of any meeting called for the purpose of taking any action authorized under Sections 6.5 or 6.6 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of the membership shall constitute a quorum.

#### 6.8 Proxy Statements

(a) Any member may submit a proxy, on a proxy statement form approved by the Board of Directors, for the purpose of voting on any action proposed under Paragraphs 6.5 or 6.6. If there are multiple owners of a Unit/lot, the owners must agree on one proxy to cast their single vote. A single vote may not be split.

(b) In the event a member fails to attend the meeting in which a vote is scheduled to be taken on any action proposed under Sections 6.5 or 6.6, and further fails to submit a proxy statement for the purpose of voting on such proposed action, that member's proxy shall be deemed to have been issued to the Board of Directors as a body, and the Board may thereupon cast that member's vote. Such default proxy shall be counted the same as any other written proxy statement for the purpose of determining whether the quorum requirement of Paragraph 6.7 has been met.

(c) If a member submits a proxy statement and thereafter attends the meeting for which the proxy statement was given, the proxy statement shall be considered null and void, and the member shall be entitled to vote as though no proxy had been given.

6.9 Right of Challenge. Any member may challenge any action approved by the members pursuant to Paragraphs 6.5 or 6.6. The challenge shall be made by filing with the Board of Directors a petition identifying with specificity the action being challenged, and bearing the signatures of at least fifty percent (50%) of the members of the Association. The petition must be filed with a member of the Board of Directors within sixty (60) days after the meeting in which the challenged action was approved. Upon receipt of such a petition, and after appropriate verification of the validity of the petition as determined by the Board of Directors, the Board of Directors shall call a new meeting to reconsider the action which is the subject of the petition. The new meeting must be held within sixty (60) days after submission of the petition to the Board, and shall be governed by the provisions of Paragraphs 6.7 and 6.8. Any action taken on the matter reconsidered will be final and the matter may not be petitioned a second time, although the matter may be raised as a new proposed action at any subsequent meeting of the Homeowners Association.

6.10 Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

6.11 Special Assessments. Special Assessments may be levied by the Board of Directors against particular Owners for the payment of Special Expenses. Such Special Assessments shall be due and payable to the Association upon demand. Provided, however, no Special Assessments shall be levied against an Owner until he shall have been given the opportunity to present evidence on his behalf at a hearing, and no such hearing shall be held until such Owner shall have received at least ten (10) days written notice specifying the reason for the proposed Special Assessment and the exact time and place of the hearing. Notice sent via U. S. Mail to the Owner's address of record with the Association shall be deemed received by the Owner five (5) days after mailing. This Notice requirement may be waived by the Owner in writing.



6.12 Effect of Nonpayment of Assessments. Remedies of the Association. Any assessment not paid within 30 days after the due date shall be subject to a late penalty as determined by the Board of Directors, not to exceed 20% of the amount due. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. The Owner shall be liable for the costs, interest, and attorneys fees related to such action or foreclosure, as provided in Section 12.3. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his lot.

6.13 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

6.14 Proof of Notice. Any notice required by the provisions of this Article VI may be sent via U.S. Mail and delivery may be proved by use of Certified Mail, Delivery Confirmation, or such other means as will reasonably establish proof of delivery to each Member's address of record on file with the Association. Proof of delivery may also be accomplished by an Owner's written acknowledgment of receipt of the notice.

## ARTICLE VII

### INSURANCE

7.1 Property Insurance. (a) The Association shall obtain and pay the premiums upon, as a Common Expense, a policy of insurance on all common improvements in the Project and all personal property within the Common Areas (except the personal property individually owned by one or more Owners and improvements to units added by the Owners thereof) in an amount equal to the maximum insurable replacement value thereof, affording protection against loss or damage by fire and other hazards covered by a standard extended coverage endorsement, and such other risks as may from time to time be customarily insured against with respect to improvements similar in construction, location and use, including by way of example, vandalism and malicious mischief. Such policy or policies shall be issued in the name of the Association, as insured, with loss payable in favor of the Association, as Trustee for each Owner and his Mortgagee, if any, who shall be beneficiaries thereof (even though not named therein) in the percentages of Common area Ownership established as to each Unit.

(b) Certificates of insurance may be issued to each Owner and Mortgagee upon request. Such policy shall not be canceled until after thirty (30) days' notice to each Owner and Mortgagee. The proceeds of such policy shall be received by the Association and held in a separate account for distribution to the Owners and their Mortgagees (subject to the provisions of the Act, this Declaration and the Association By-Laws) as their interests may appear; provided, however when repair or reconstruction of the Project shall be required as provided in Article VIII hereof, such proceeds shall be applied to such repair or reconstruction.

7.2 Public Liability and Property Damage. The Association shall purchase broad form Comprehensive Liability coverage in such amounts and in such forms deemed appropriate by it. This coverage shall be issued in the name of the Association and shall include Owners in their capacity as Members of the Association as additional insured and evidence thereof shall be furnished to each additional insured upon request. Coverage under this policy shall include, but not be limited to, legal liability of the Association for bodily and personal injuries, property damage, operation of

automobiles on behalf of the Association and activities of the Association in connection with the operation, maintenance or use of the Common Areas. The policy shall contain a "Severability of Interest" endorsement which shall preclude the insurer from denying the claim of any Owner because of negligent acts of the Association or other Owners and a cross-liability endorsement pursuant to which the rights of the named insureds as between themselves are not prejudiced. The policy shall provide that the policy may not be canceled or substantially modified by the insurer unless it gives at least thirty (30) days prior written notice therefore to each insured. Any such coverage procured by the Board of Directors shall be without prejudice to the right of the Owners to insure their personal liability for their own benefit at their own expense.

7.3 Owner's Insurance. Each Owner, and not the Association, shall have responsibility of obtaining and keeping in full force and effect, at his sole expense, (a) standard fire and extended risk insurance on the Owner's Unit and personal property and furnishings contained in his Unit or located on his respective Limited Common Areas, and on any improvements added to his lot or Unit by an Owner thereof; (b) broad form Comprehensive Liability coverage for his lot and Unit (which shall be in addition to and not in lieu of the Comprehensive Liability coverage required to be purchased by the Association); and (c) such other insurance as he may elect to purchase in addition to the insurance coverage purchased by the Association; provided, however, that in no event is the insurance coverage purchased by the Association to be brought into contribution with insurance purchased by Owners. Certificates of insurance shall include the Association as an additional insured and a certificate of insurance shall be furnished annually to the Association and must remain on file with the Association. If an Owner fails to provide proof of insurance within 30 days of purchase of a Unit, or within 30 days after the Board of Directors or Association Secretary has made written request for such proof, the Association is hereby authorized to purchase insurance for the Unit and charge the cost of such insurance to the Owner as a Special Expense.

7.4 Waiver of Subrogation. In the event of loss or damage to the Common Areas or the property of an Owner which shall be covered by insurance, the insurance company paying such claim shall have no right of subrogation against the Association, its agents and employees, nor the Owners, their tenants, or members of their respective households.

7.5 Power of Attorney. Each Owner hereby irrevocably constitutes and appoints the Association as his true and lawful attorney-in-fact and for the purposes of maintaining such insurance policies.

7.6 Additional Insurance; Further General Requirements. The Board of Directors may also procure insurance which shall insure the Common Areas and the Association or the Owners and others against such additional risks as the Board of Directors may deem advisable. Insurance procured and maintained by the Board of Directors shall not require contribution from insurance held by any of the Owners or their Mortgagees. Each policy of insurance obtained by the Board of Directors shall, if reasonably possible, provide:

(a) a waiver of the insurer's right of subrogation against the Association, the Owners and their respective directors, officers, agents, employees, invitees, and tenants;

(b) that it cannot be canceled, suspended or invalidated due to the conduct of the Association without a prior written demand that any alleged defect be cured; and

(c) that any "no other insurance" clause therein shall not apply with respect to insurance maintained individually by any of the Owners.

7.7 Fidelity Coverage. The Association may elect to maintain fidelity coverage to protect against dishonest acts on the part of officers, trustees, managing agents, directors and employees of the Association. In that event, such fidelity bonds shall:

- (a) name the Association as an obligee;
- (b) be written in an amount based upon the best business judgment of the Board of Directors and shall not be less than the estimated maximum of funds (including reserve funds) in the custody of the Association or the Managing Agent at any given time during the term of each bond, but in no event be less than a sum equal to three months' Common Assessment on all Lots plus reserve funds;
- (c) contain waivers of any defense based upon the exclusion of volunteers or persons who serve without compensation from any definition of "employee" or similar expression; and
- (d) provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days' prior written notice to the insured.

7.8 Review of Insurance. The Board of Directors shall periodically, and whenever requested by five (5) or more Owners, review the adequacy of the Association's insurance program and shall report in writing the conclusions and action on such review to the Owner of each Unit and to the holder of any Mortgage on any Lot who shall have requested a copy of such report. Copies of every policy of insurance procured by the Board of Directors shall be available for inspection by any Owner or Mortgagee during reasonable business hours, or after business hours at the discretion of the Board of Directors.

7.9 Other Insurance Provisions. All insurance required pursuant to this Article VII shall be written by insurers licensed in the State of Utah. Notwithstanding anything in this Article VII to the contrary, any insurance required or allowed to be obtained by the Association pursuant to Sections 7.1, 7.2, 7.6 or 7.7 of this Article shall be required only to the extent that such coverage is reasonably obtainable at reasonable rates and is customarily obtained with respect to improvements or facilities having the same or similar characteristics of the Common Areas and Units or risks being insured.

## ARTICLE VIII

### PARTY WALLS

8.1 General Rules of Law to Apply. Each wall built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

8.2 Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

8.3 Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other causality, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

8.4 Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

8.5 Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

8.6 Arbitration. In the event of any dispute arising concerning 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.

## ARTICLE IX

### MORTGAGES

9.1 Notices. Any Owner who mortgages his lot shall furnish the Association the name and address for such Mortgagee, and the Association shall maintain such information in a book entitled "Mortgages of Lots". The Association may report to such Mortgagee any unpaid assessments due from the Owner of such lot at the same time as the Association makes demand on the Owner thereof for payment of such assessment. The Association may also report any other default by an Owner-Mortgager in the performance of such Owner's obligations under the terms and provisions of this Declaration which shall not have been cured within thirty (30) days after written notice to such Owner-mortgager by the Association specifying such default.

9.2 Delinquent Assessments. A Mortgagee may, but shall not be required to, pay any delinquent assessments due upon the mortgaged lot, and the amount of such payment may be added to the mortgage indebtedness. Failure to pay any assessment when due and payable by an Owner-Mortgager may constitute a default under the terms and provisions of the mortgage instrument, authorizing foreclosure of the lien created therein, at the option of the Mortgagee.

9.3 Right to Examine. The mortgagee shall have the right to examine the books and records of the Association upon request.

## ARTICLE X

### ARCHITECTURAL CONTROL

10.1 Creation of Committee. No building, fence, wall or other structure shall be commenced, erected or maintained upon the Project, 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 location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an Architectural Committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

## ARTICLE XI

### RESTRICTIONS

11.1 RESIDENTIAL USE. Each unit may be occupied and used by its Owner only as a private dwelling for the Owner, his family, tenants and social guests.

11.2 Alterations. Notwithstanding the above, no Owner shall make structural alterations or modifications to his Unit or to any of the Common Areas or Limited Common Areas, including, but not limited to, the erection of antennas, aerials, awnings, the placement of any reflective or other materials in the windows of his Unit or other exterior attachments and signs or other advertising devices without written approval of the Association. The Association shall not approve any alterations, decorations or modifications which would jeopardize or impair the soundness, safety or appearance of the Project.

11.3 Improper Activities. NO immoral, improper, unlawful or offensive activities shall be carried on in any Unit or upon the Common Areas, nor shall anything be done which may be or become an annoyance or nuisance to the Owners. No Owner shall store any dangerous explosives or inflammable materials either in his Unit or upon the Common Areas, or permit anything to be done or keep or permit to be kept in his Unit or on the Common Areas anything that will increase the rate of insurance on the Project.

11.4 Signs. No signs or other advertising devices shall be displayed which are visible from the exterior of any Unit or on the Common Areas, including "For Sale" signs, except in conformity with the Rules promulgated by the Board of Directors.

11.5 Use of Common Areas. The Common Areas shall not be used for storage of supplies, personal property or trash or refuse of any kind except common trash receptacles placed at the discretion of the Association, nor shall the Common Areas be used in any way for the drying, shielding or airing of clothes or other fabrics. Stairs, entrances, sidewalks, yards, driveways or parking areas shall not be obstructed in any way nor shall unauthorized persons use them for other than their intended purposes. In general, no activities shall be carried on nor condition maintained by any Owner either in his Unit or upon the Common Areas which despoils the appearance of the Project.

11.6 Pets. No animals shall be kept in the Project except household pets. Such pets may not be kept or bred for any commercial purpose and shall have such care and restraint so as not to be obnoxious or offensive on account of noise, odor, or unsanitary conditions. No savage or dangerous animals shall be kept. No more than one household pet may be kept in any Unit without the written permission of the Association. No pets shall be permitted to run loose upon the Common Areas, and any Owner who causes any animal to be brought upon the Project shall indemnify and hold harmless the Association and/or the Owners from and against any loss, damage or liability which they may sustain as the result of the presence of such animal on the premises, whether or not the Association has given its permission therefore.

11.7 Parking. Two parking spaces shall be assigned by the Board of Directors of the Association for each lot. One parking space may be covered and the second open. These parking spaces shall be considered Limited Common Area. There will be no parking of recreational vehicles or boats in the Project, except in the Overflow Parking Area, and such parking shall be subject to availability of space and approval of the Board of Directors. Parking shall be strictly regulated by the Board of Directors, by rule, and such rules shall be strictly enforced.

## ARTICLE XII DEFAULT

12.1 Definition. Failure to comply with any of the terms of this Declaration, the Articles of Incorporation or By-Laws of the Association or the duly adopted Rules of the Association, shall constitute an event of default and shall be grounds for relief, which may include without limitation an action to recover sums due for special assessments, damages and injunctive relief, or any combination thereof.

12.2 Remedies. In addition to all other remedies herein contained or as may be provided by law, the Association may discontinue the furnishing of any utilities or other services to an Owner who is in default of his obligations to the Association or other Owners as set forth herein upon thirty (30) days' written notice to such Owner and to any Mortgagee of such Owner's Unit of its intent to do so.

12.3 Costs. In any proceeding arising because of any alleged default by any Owner, the Association, if successful, shall be entitled to recover the costs of the proceedings, interest, and reasonable attorneys fees from such Owner.

12.4 No Waiver. The failure of the Association or of any Owner to enforce any right, provision, covenant or condition which may be granted by the Act, this Declaration, the Articles of Incorporation or By-Laws of the Association, or the Rules, shall be deemed to be cumulative and the exercise of any one or more of such rights, remedies and privileges shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other additional rights, remedies or privileges, as may be available to such party at law or in equity.

## ARTICLE XII GENERAL PROVISIONS

13.1 Acceptance of Governing Rules. The Association, all present or future Owners, tenants or future tenants, or any other persons using the facilities of the Project are subject to and shall comply with the Act, this Declaration, the Articles of Incorporation and By-Laws of the Association, and the Rules, and the acquisition, occupancy or rental of a Unit shall signify that all such documents are accepted and ratified. In the event of a conflict in any of the provisions of any such documents, the documents shall govern or control in the following order or preference: (a) the Act; (b) this Declaration; (c) the Articles of Incorporation of the Association; (d) the By-Laws of the Association and (e) the Rules.

13.2 Enforcement. The Association, or any Owner, shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

13.3 Delivery of Notices. All notices or other documents required herein to be delivered by the Association or Owners may be delivered either personally or by mail. If delivered personally, same shall be deemed to have been delivered when actually received by the Owner or when left at the front door of his Unit. If mailed, same shall be deemed delivered when deposited in the United States Mail addressed to the Owner at his address as it appears on the records of the Association with postage thereon prepaid.

13.4 Severability. If any of the provisions of the Declaration or any paragraph, sentence, clause, phrase or word, or the application thereof in any circumstances be invalidated, such invalidity shall not affect the validity of the remainder of this Declaration, and the application of any provisions, paragraph, sentence, clause, phrase or word in any other circumstances shall not be affected thereby.

13.5 Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by an instrument signed by not less than ninety percent (90%) of the Lot Owners. Any amendment must be recorded.

13.6 Annexation. Additional land may be annexed by the Association with the written consent of at least ninety percent (90%) of the then-current Owners, provided that the FHA and VA determine that the annexation is in accord with the general plan heretofore approved by them.

13.7 Paragraph Titles. Paragraph titles are used in this Declaration for convenience of reference and are not intended to limit, enlarge or change the meaning of the contents of the various paragraphs.

IN WITNESS WHEREOF, Declarant, by and through its lawfully elected President, has duly executed this Declaration on the day and year herein first above written.

ATTEST:

/S/ L. Randa Wells  
Randa Wells, Secretary  
The Colonies Planned Development  
Homeowners' Association, Inc.

BY: /S/ K. Allan Zabel  
K. Allan Zabel, President  
The Colonies Planned Development  
Homeowners' Association, Inc.

#### NOTARY CERTIFICATION

State of Utah                    )  
  :       ss.  
County of Utah                )

On this 17<sup>th</sup> day of December, 2002, personally appeared before me, RANDA WELLS and K. ALLAN ZABEL, proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to on this instrument, and who by me duly sworn, did say that they are the Secretary and President, respectively, of The Colonies Planned Development Homeowners' Association, Inc., and that said document was signed by them in behalf of said corporation by authority of a Resolution of its Board of Directors, and acknowledged that said corporation executed the same.

[SEAL]

/S/ Linda DeMille  
Notary Public  
Residing at:  
My Commission Expires: 6/15/06