

DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS  
(First Amended)

OF

COBBLESTONE AT SPRING CREEK

AN EXPANDABLE PLANNED UNIT DEVELOPMENT COMMUNITY  
(Consisting of six (6) phases)

THIS DECLARATION ("Declaration") is made on the date hereinafter set forth, of the certain covenants, conditions and restrictions named the COBBLESTONE AT SPRING CREEK DEVELOPMENT, by the undersigned "Declarant", for itself, its successors, grantees and assigns, pursuant to the Utah Code Annotated 1953, Section 57-8-1 et. seq., as amended, of the State of Utah.

RECITALS

A. Declarant is the owner of certain real property (the "Land") in Cache County, Utah, more particularly described on Exhibit "A" attached hereto and incorporated by reference.

B. Declarant has or will construct certain buildings and improvements thereon in accordance with the plans and drawings set forth in the Record of Survey Map filed concurrently herewith, consisting of four (4) sheets, prepared and certified by Butler Engineering & Land Surveying, Inc., a Utah Registered Land Surveyor.

C. Declarant desires by filing this Declaration and the subdivision plat map to submit the Land and the said buildings and other improvements constructed or to be constructed in six (6) phases thereon, to the provisions of the above statute as the "Cobblestone at Spring Creek Planned Unit Development ("P.U.D.") Development"

D. Declarant desires the individual units contained in said P.U.D., together with undivided ownership interests in the Common Areas and Facilities appurtenant thereto, be subject to the covenants, limitations, and restrictions contained herein.

E. Declarant desires and intends to develop, and has developed, possible subsequent phases to be built on land contiguous with and adjacent to the Land included in the first, second, third, fourth, fifth, and sixth subsequent phases to be developed on "the land". It is the Declarant's intent to subject the Additional Land and Units so developed into the this P.U.D. Development by the filing of such amended or supplemental declarations as are necessary to accomplish that purpose.

F. This Declaration was approved by City of Providence on the    day of March, 2001.

## DECLARATION

NOW, THEREFORE, for such purposes, Declarant hereby makes the following Declaration containing covenants, conditions and restrictions relating to this Planned Unit Development which, pursuant to the foregoing statute of the State of Utah, shall be an enforceable equitable servitude, where reasonable, and shall run with the land:

1. Name of the Planned Unit Development: The name by which the Planned Unit Development shall be known is COBBLESTONE AT SPRING CREEK.

2. Definitions: The terms used in this Declaration, including the attached Exhibits, shall have the meaning stated in the foregoing statute and as given herein unless the context otherwise requires.

(a) "The Act" shall refer to Utah Code Annotated 1953, Section 57-8-1, et. seq., as the same may be amended from time to time.

(b) "Additional Land" shall mean and refer to any land or an interest therein which may from time to time be added to and subject to the terms and conditions of this Declaration. Such Additional Land may include all or part of the tracts of land situated in Cache County, State of Utah, together with all appurtenances thereto as described on Exhibit "B" attached hereto and incorporated herein by this reference.

The description of the Additional Land is solely for purposes of identification and is not intended and shall not be deemed to constitute any lien, encumbrance, restriction, or limitation upon any real property or interest in real property other than the Land which the Declaration expressly submits to the provisions of the Act, which Land is expressly described on Exhibit "A" attached hereto.

(c) "Adjacent Unit Owner" shall mean the Unit Owner directly adjacent to another Unit Owner or a specific Lot of Convertible Land.

(d) "Association of Unit Owners" or "Association" shall mean and refer to Cobblestone at Spring Creek Homeowner's Association, of which all of the Unit Owners are members. The Association shall be governed in accordance with this Declaration and the organizations Bylaws which will be adopted at the organizational meeting subsequent hereto.

(e) "Building" shall mean all buildings, structures, and the like now or subsequently erected or constructed on the Land.

(f) "Common Areas and Facilities" or "Common Space" shall mean and refer to:

(1) The Land, other than the land to be deeded for each unit, and specifically excluding the Land defined as Convertible Land or Limited Common Space.

(2) That portion of the Land not specifically included in the respective Units as herein defined;

(3) All exterior walkways, driveways, streets, such recreational areas and facilities as may be provided, yards, fences, service and parking areas, open spaces, club house, and entrances and exits, and in general all other apparatus, installations and other parts of the Property necessary or convenient to the existence, maintenance and safety of the Common Areas and Facilities or normally in common use;

(4) Those areas specifically set forth and designated in the Map as "Common Ownership" or "Limited Common Area"; and

(5) All Common Areas and Facilities as defined in the Act, whether or not expressly listed herein.

(g) "Common Expenses" shall mean and refer to all expenses of administration, maintenance, repair or replacement of the Common Areas and Facilities, taxes and insurance, except as expressly limited; to all items, things and sums described in the Act which are lawfully assessed against the Unit Owners in accordance with the provisions of the Act, this Declaration, the Bylaws, such rules and regulations pertaining to the Unit Owners or the Management Committee may from time to time adopt, and such other determinations and agreements lawfully made and/or entered into by the Management Committee.

(h) "Convertible Land" shall mean and include those designated portions of the land identified on the Plat (lots A, B, C, D & E) and described in the attached exhibits as "Convertible Land" as well as land which is subsequently acquired by the developer or others whom the developer identifies as being associated with the developer for additional phases of the Project. Convertible Land is described in the attached Exhibit "C."

As to Phase I of the Project:

- (1) Lot A shall be associated with Unit #1 and is designated as common area until built upon by the owner of Unit 1, at which time it will become part of unit 1.
- (2) Lot B shall be associated with Unit #5 and is designated as common area until built upon by the owner of Unit 5, at which time it will become part of unit 5.
- (3) Lot C shall be associated with Unit #6 and is designated as common area until built upon by the owner of Unit 6, at which time it will become part of unit 6.
- (4) Lot D shall remain Common Areas and Facilities.
- (5) Lot E shall remain Common Areas and Facilities.

(i) "Declarant" shall mean individual Unit Owners of Cobblestone at Spring Creek Homeowner's Association, a Utah Corporation, and Brookhaven Meadows Development, a Utah Corporation.

designated and designed to serve only that Unit, such as appliances, electrical receptacles and outlets, air conditioning compressors and other air conditioning apparatus, furnaces, stoves, fixtures and the like, shall be considered part of the Unit, as shall all decorated interiors, all surfaces of interior structural walls, floors and ceilings, windows and window frames, doors and door frames, and trim, consisting of, inter alia and as appropriate, wallpaper, paint, flooring, carpeting and tile. All pipes, wires, conduits, or other public utility lines or installations constituting a part of the Unit and serving only the Unit, and any structural members other than bearing walls and structural members other than bearing walls and structural members, of any other property of any kind, including fixtures and appliances within any Unit, which are removable without jeopardizing the soundness, safety or usefulness of the remainder of the building within which the Unit is situated shall be considered part of the Unit.

(u) "Unit Owner" or "Owner" shall mean the person, persons, or legal entity owning a Unit in fee simple and an equal undivided interest in the Common Areas and Facilities as shown in the records of the County Recorder of Cache County, Utah. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term Unit Owner or Owner shall not mean or include a mortgagee or a beneficiary or trustee under a deed of trust unless and until such a party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

(v) Those definitions contained in the Act, to the extent they are applicable to and not inconsistent herewith, shall be and are hereby incorporated herein by reference and shall have the same effect as if expressly set forth herein and made a part hereof.

3. Submission to Ownership. Declarant hereby submits the Land, buildings, and other improvements constructed thereon or hereafter to be constructed, together with all appurtenances thereto, to the provisions of the Act as a Planned Unit Development and this Declaration is submitted in accordance with the terms and the provisions of the Act and shall be construed in accordance therewith. It is the intention of Declarant that the provisions of the Act shall apply to the Property.

4. Covenants to Run with the Land. This Declaration containing covenants, conditions and restrictions relating to the Project shall be enforceable equitable servitude which shall run with the land and this Declaration and its servitude shall be binding upon Declarant, its successors and assigns and upon all Unit Owners or subsequent Unit Owners, their grantees, mortgagees, successors, heirs, executors, administrators, devisee and assigns.

5. Description of Property.

(a) Description of Land. The Land is that tract or parcel, more particularly described in Exhibit "A" attached hereto.

(b) Description of Improvements. The significant improvements contained or to be contained in the Project include single and multiple family housing, duplexes, one, two and three story buildings containing multiple Units each constructed principally of concrete foundation with exterior walls of vinyl siding and/or stucco, asphalt shingle roofing, interior walls of wood studs, plywood and dry wall plaster or a similar looking material. Each unit has an assigned garage.

The Project also includes landscaping, guest parking and other facilities located substantially as shown in the Map and will be subject to easements which are reserved through the Project as may be required for utility services.

(c) Description and Legal Status of Units. The Map shows the Unit Number of each Unit, its location, those Limited Common Areas and Facilities which are reserved for its use, and the Common Areas and Facilities to which it has immediate access. All Units, of whatever type, shall be capable of being independently owned, along with the assigned garage.

(d) Garages. Garages belong to the unit as assigned and shown on the recorded plat.

(e) Unit Described. Each Unit shall include both the portions of the building that are not common areas and facilities within such boundary lines and the space so encompassed. Without limitation, a Unit shall include any finishing material applied or affixed to the interior surfaces of the interior walls and all utility pipes, lines, systems, fixtures, or appliances found within the boundary lines of the unit and servicing only that unit.

(f) Common Areas and Facilities. Except as otherwise provided in the Declaration, the Common Areas and Facilities shall consist of the areas and facilities described in the definitions and constitute in general all of the parts of the Property except the Units. Without limiting the generality of the foregoing, the Common Areas and Facilities shall include the following;

(1) The ground and land not conveyed to each unit owner.

(2) All common structural parts of the buildings including, without limitation, foundations, columns, joists, beams, supports, supporting walls, floors, ceilings and roofs;

(3) Driveways, parking areas, lawns, shrubs, and gardens, sidewalks, and recreational areas;

(4) Any common utility pipe or line or system servicing more than a single Unit, and all ducts, wires, conduits, and other accessories used therewith;

(5) All other parts of the Property necessary or convenient to its existence, maintenance and safety, or normally in common use, or which have been designated as Common Areas and Facilities in the Map; and

(6) All repairs and replacements of any of the foregoing.

(a) Description of Limited Common Areas and Facilities. Each Owner of a Unit is hereby granted an irrevocable and exclusive license to use and occupy the Limited Common Areas and garage Facilities reserved exclusively for the use of his Unit. The Limited Common Areas appurtenant to any given Unit consist of a patio, entrance walkway, garages, contiguous with



the Unit as indicated on the Map. The exclusive right to use and occupy each Limited Common Area shall be appurtenant to and shall pass with the title to the Unit with which it is associated.

6. Statement of Purpose and Restriction on Use.

(a) Purpose. The purpose of the Project is to provide residential housing and parking spaces in accordance with city requirements in effect on **January 1, 2001** for Unit Owners and to tenants and guests, all in accordance with the provisions of the Act.

(b) Restrictions on Use. The Units and Common Areas and Facilities shall be used and occupied as hereinafter set forth.

(1) Each of the Units shall be occupied by the Unit Owner, his family, servants, guests or tenants to be used only as a single-family residence and for no other purpose. No Unit shall be used, occupied, or altered in violation of the law, so as to create a nuisance or interfere with the rights of any Owner or in a way which would result in an increase of the costs of any insurance covering the Common Areas.

(2) No parking area shall be used for parking of trailers, mobile homes, boats, snowmobiles or campers which have been detached from trucks. No repairs to automobiles or trucks or changing oil on any vehicle, trailer or boat may be performed in any parking or common area. There shall be no storage of any property except of vehicles as above provided in any parking stall or common area. Each Unit owner shall use only parking stalls assigned or purchased. All other parking is to be used as "guest only" parking. No "garage sales," "yard sales" or similar activities may be conducted without first obtaining the permission of the Management Committee in writing. The Management Committee may attach such conditions as are reasonably necessary in their opinion to carry out the purpose and intent of these Covenants.

(3) The Common Areas and Facilities shall be used only for the purposes for which they are intended in the furnishing of services and facilities for the enjoyment of the Units.

(4) Nothing shall be done or kept in any Unit or in the Common Areas and Facilities which will increase the rate of insurance on the buildings or contents thereof beyond that customarily applicable for residential use, or will result in the cancellation of insurance on the buildings, or the contents thereof, without the prior written consent of the Management Committee. No Unit Owner shall permit anything to be done or kept in his Unit or in the Common Areas and Facilities which is in violation of any law, ordinance or regulation of any governmental authority. No unit owner or guest shall use or store any hazardous material or substance on premises.

(5) No Unit Owner shall cause or permit anything (including, without limitation, a sign, awning, canopy, shutter, radio, television antenna, or satellite dish) clothes lines, pots, plants, wind chimes or other decorative items to hang, be displayed or otherwise affixed to or placed on the unit, any exterior walls, roof or fence or any part of the land thereof, or on the inside or outside of windows or doors, without the prior written consent of the Management Committee. Temporary open house signs may be placed subject to written approval of the Management Committee as to location, duration, size and design. If signs are placed without written approval,

the Committee retains the right to remove them. No signs for the sale of a unit may be placed in or upon any vehicle on common areas without approval of the management committee. Notwithstanding the forgoing, to the extent that any State or Federal Law allows the placement of a device on a Unit the Unit Owner may within the strict compliance of the law, rule or regulation exercise their rights. Nothing herein is intended to waive the Unit Owner's obligation to notify the Management Committee of his intent to do so, or of the Unit Owner's obligation to obtain permission as to the location of the device.

(6) Horizontal leveler type window blinds are allowed subject to Management Committee approval of the color. No plastic, sun screen or reflective type material shall be used on the interior or exterior of the windows.

(7) No noxious, offensive, or illegal activity shall be carried on or permitted in any Unit or in the Common Areas and Facilities, nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or public or private nuisance to the other Unit Owners or occupants.

(8) Nothing shall be done in any Unit or in, on, or to the Common Areas and Facilities which will impair the structural integrity of the buildings or any part thereof or which would structurally change the buildings or any part thereof except as is otherwise provided herein.

(9) No animals or pets of any kind (except accommodation animals allowed under Federal and State Law such as the ADA) are to be raised, bred or kept in any Unit or in the Common Areas or Limited Common Areas without the prior written approval of the Management Committee with respect to the specific pet. If the Unit Owner obtains prior written approval from the Management Committee, then the Unit Owner shall keep the pet off the Common Areas. Notwithstanding any other provision, if a Unit Owner obtains the permission of the Management Committee for a pet, the Unit Owner shall not allow the animal to leave the unit unless it is on a leash and accompanied by the Unit Owner who shall be responsible for having in his or her immediate presence a device to pick up any dropping (animal dung) the pet may leave outside of the unit. If the pet becomes a nuisance to other Unit owners, the pet owner shall remove the pet from the Project upon written notice by the Management Committee or its representative. If the Management Committee gives notice in writing that the animal has become a nuisance and must be removed then the animal shall be immediately removed from the premises. In addition to such other remedies as are set forth herein including attorney fees, the failure to remove the animal shall subject the unit owner to a liquidated damage in favor of the association in the amount of \$50.00 per day.

(10) The Common Areas and Facilities shall be kept free and clear of all rubbish, debris and other unsightly materials.

(11) No Owner shall violate the rules and regulations regarding use of the Units and of the Common Areas as adopted from time to time by the Management Committee.

(12) All owners shall conform to requirements of City of Providence for zoning.

(13) No common area shall be subdivided, sold, or otherwise conveyed without approval of City of Providence.

(14) A copy of these covenants shall be given to all unit owners by the title company acting as a closing agent at the time of closing and/or purchase by the unit owner.

7. Person to Receive Service of Process. The person to receive service of process in the cases provided herein or in the Act is Joseph M. Chambers, whose address is 31 Federal Avenue, Logan, Utah 84321. The said person may be changed by the recordation by the Management Committee of an appropriate instrument.

8. Ownership and Use.

(a) Ownership of a Unit. Except with respect to any of the Common Areas and Facilities and located within the bounds of a Unit, each Unit Owner shall be entitled to the exclusive ownership and possession of his Unit and exclusive use of assigned garage or garages and to the ownership of an undivided interest in the Common Areas and Facilities exclusive of the Convertible Land.

(b) Nature of and Restrictions on Ownership and Use. Each Unit Owner shall have and enjoy the rights and privileges of fee simple ownership of his Unit and garages. There shall be no requirements concerning who may own Units, it being intended that they may and shall be owned as any other property rights by persons, corporations, partnerships, or trusts and in the form of common tenancy. All units are to be sold as single family owner occupied units for use by family members. All unit Owners, their tenants and other occupants or users of the Project, shall be subject to the Act, this Declaration, the Bylaws, and all rules and regulations of the Association of Unit Owners and Management Committee.

(c) Prohibition Against Subdivision of Unit. No Unit Owner, by deed plat or otherwise, shall subdivide or in any manner cause the ownership of his Unit to be separated into physical tracts or parcels smaller than the whole Unit as shown on the Map and no garage assigned to any Unit shall be conveyed separately from such Unit.

(d) Ownership of Common Areas and Facilities. The Common Areas and Facilities contained in the Project are described and identified in this Declaration. Said Common Areas and Facilities shall be owned by the Unit Owners as tenants in common. Each Unit owner will have an equal undivided ownership interest in the Common Areas and Facilities with all other unit owners. Such an undivided ownership interest shall automatically accompany the transfer of the Unit to which it relates. The Common Areas and Facilities shall be used only in a manner which is consistent with their community nature and with the use restrictions applicable to the Units contained in the Project.

(e) Use of Common Areas and Facilities. Except with respect to Limited Common Areas each Unit Owner may use the Common Areas and Facilities in accordance with the purpose for which they are intended, but subject to this Declaration, the Bylaws, and the rules and



regulations of the Management Committee. This right of use shall be appurtenant to and run with each Unit.

9. Use of Limited Common Areas and Facilities. A Unit Owner's exclusive right of use and occupancy of the Limited Common Areas and Facilities reserved for his Unit shall be subject to and in accordance with this Declaration and the Bylaws. Any Limited Common Area appurtenant to a Unit may be leased only to persons who reside in the Project or used by the family, servants or guests thereof on a temporary basis.

10. Voting-Multiple Ownership. The vote attributable to and exercisable in connection with a Unit shall be one vote for each Unit owned. In the event there is more than one Owner of a particular Unit, the vote relating to such Unit shall be exercised as such Owners may determine among themselves. A vote cast at any meeting by any of such Owners shall be conclusively presumed to be the vote attributable to the Unit concerned unless an objection is immediately made by another Owner of the same Unit. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists. Developer retains control of the project by retaining 51% of all votes until all six (6) phases are built and units in each and every phase has been sold, provided however, that control of the Owners Association shall pass to the owners of the Units not later than the earlier of the following: (i) 120 days after the date in which 75% of the Units have been conveyed to Unit purchasers; or (ii) seven (7) years from the date of the first conveyance of a Unit to a Unit purchaser. Notwithstanding the foregoing provision, in the event control passes from the developer to the Owners Association the unsold units owned by the developer shall only be assessed the actual costs of hazard insurance and maintenance of the common area associated with the unsold unit.

11. Management.

(a) Management Committee. The business, property and affairs of the Planned Unit Development shall be managed, operated and maintained by the Management Committee of the Association as agent for the Unit Owners. The Management Committee shall have, and is hereby granted, the following authority and powers:

(1) The authority, without the vote or consent of the Unit Owners or of any other person(s), to grant or create, on such terms as it deems advisable, utility and similar easements, over, under, across and through the Common Areas and Facilities, and work performed pursuant to such easements must be done in a workmanlike manner and any damage to the interior structure or decor of a Unit must be repaired;

(2) The authority to execute and record, on behalf of all Unit Owners, any amendment to the Declaration or Map which has been approved by the vote or consent necessary to authorize such amendment;

(3) The authority to enter into contracts which in any way concern the Project, so long as any vote or consent of the Unit Owners necessitated by the subject matter of the agreement has been obtained;

(4) The power and authority to convey or transfer any interest in real property, so long as any vote or consent necessary under the circumstances has been obtained;

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

(6) The power and authority to add any interest in real property obtained pursuant to paragraph (5) above to the Project, so long as such action has been authorized by the necessary vote or consent;

(7) The power to sue and be sued.

(8) The authority to license persons not otherwise entitled to use any of the recreational areas and facilities to use the same from time to time as the Committee deems appropriate upon payment of fees prescribed by it to help defray the cost of maintenance thereof and in conformance with the conditions imposed by the City of Providence or developer and in conformance with city ordinances and regulations.

(9) The power and authority to borrow money, provided that no indebtedness for borrowed funds shall exceed in the aggregate at any given time the sum of \$5,000.00 without the prior vote or approval of the Association at a meeting duly called and convened at which a quorum is present.

(10) The authority to promulgate such reasonable rules, regulations, and procedures as may be necessary or desirable to aid the Committee in carrying out any of its functions or to insure that the project is maintained and used in a manner consistent with the interests of the Unit Owners; and

(11) The power and authority to perform any other acts and to enter into any other transactions which may be reasonably necessary for the Management Committee to perform its functions as agent for the Unit Owners including the power to collect, enforce, and place liens on unit owners for delinquent and association fees.

Any instrument executed by the Management Committee that recites facts which, if true, would establish the Committee's power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument.

(b) Composition of Management Committee. The Committee shall be composed of not more than five (5) members. At the first regular Association meeting two (2) Committee members shall be elected for three-year terms, two (2) members for a two-year term, and one (1) Committee member shall be elected for a one year term. One (1) member of the Committee must an owner, family member or tenant of the Townhouses; One (1) member of the Committee must an owner, family member or tenant of the Condominiums; and three (3) member of the Committee must an owner, family member or tenant of the Homes. At each annual Association meeting

thereafter any vacant seat on the Committee shall be filled with a member elected for a three-year term. Only Unit Owners and officers and agents of Owners other than individuals shall be eligible for Committee membership. At the annual meeting, a Unit Owner may vote as many candidates for Committee membership as there are seats on the Committee to be filled. Developer shall retain 51% of representation on the Board until all phases are developed and until all six (6) phases are built and units in each and every phase has been sold.

Any Committee member who fails on three successive occasions to attend Committee meetings (whether regular or special) or who has failed to attend at least 25% of all Committee meetings (whether regular or special) held during any twelve-month period shall automatically forfeit his or her seat. The remaining Committee members shall elect a replacement to sit on the Committee until the expiration of the term for which the member being replaced was elected. Unless a member forfeits or otherwise loses his or her seat as herein provided, a member shall serve on the Committee until his successor is elected. Committee members shall be reimbursed for all expense reasonably incurred in connection with Committee business.

(c) Responsibility. The Management Committee shall be responsible for the control, operation and management of the Project in accordance with the provisions of the Act, this Declaration, such administrative, management and operational rules and regulations as it may adopt from time to time as herein provided, and all agreements and determinations lawfully made and entered into by said Committee.

(d) Additional Facilities. The Management Committee shall, subject to any necessary approval, have the authority to provide such facilities, in addition to those for which provision has already been made, as it may deem to be in the best interests of the Unit Owners and to effect the necessary amendment of documents and maps in connection therewith.

(e) Name. The Management Committee shall be known as Cobblestone at Spring Creek Management Committee.

(f) Manager. The Committee may carry out through a Professional Property Manager any of its functions which are properly the subject of delegation. Any Manager so engaged shall be an independent contractor and not an agent or employee of the Committee, shall be responsible for managing the Project for the benefit of the Committee and the Unit Owners, and shall, to the extent permitted by law and the terms of the agreement with the Committee, be authorized to perform any of the functions or acts required or permitted to be performed by the Management Committee itself. Any agreement for professional management of the project which may be entered into by the Management Committee or the Association shall call for a term not exceeding one (1) year renewable by agreement of the parties for successive one-year periods, and shall provide that such management agreement may be terminated with or without cause by either party upon not more than thirty (30) days written notice, and without any payment of a termination fee.

## 12. Easements.

(a) Each Unit, shall be subject to such easements as may be necessary for the installation, maintenance, repair or replacement of any Common Areas and Facilities located within

the boundaries of such Unit and for electrical and gas service, or t.v. cable services to adjacent units in the same building. The Units are also subject to a Right of Entry in favor of the Association as provided in Paragraph 22 below. The Common and Limited Common areas are subject to such utility and other easements as are reasonable necessary for the development and operation of the ongoing nature of the Project, including the expansion of the Project as contemplated herein.

(b) In the event that, by reason of the construction, reconstruction, repair, settlement, movement or shifting of any part of the building, any part of the Common Areas and Facilities encroaches or shall hereafter encroach upon any part of any Unit or any part of the Common Areas and Facilities or any other Unit, valid easements for such encroachment and the maintenance of such encroachment are hereby established and shall exist for the benefit of such Unit and the Common Areas and Facilities, as the case may be, so long as all or any part of the building containing any such Unit shall remain standing; provided, however, that in no event shall a valid easement or any encroachment be created in favor of any Unit Owner or in favor of the Unit Owners as owners of the Common Areas and Facilities if such encroachment occurred due to the willful conduct of such Unit Owner or Owners.

(c) Some of the Common Areas are or may be located within the Units or may be conveniently accessible only through the Units. The Owners of the other Units shall have the irrevocable right, to be exercised by the Committee as its agent, to have access to each Unit and to all Common Areas from time to time during such reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Areas located therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Areas or to another Unit or Units. The Committee shall also have such rights independent of the agency relationship. Damage to the interior of any part of a Unit or Units resulting from the maintenance, repair, emergency repair, or replacement of any of the Common Areas or as a result of emergency repairs within another Unit at the instance of the Committee or of Unit Owners shall be the responsibility of the Association; provided, that if such damage is the result of negligence of the Owner of a Unit, then such Owner shall be financially responsible for all such damage. Such damage shall be repaired and the property shall be restored substantially to the same condition as existed prior to damage. Amounts owing by Owners pursuant hereto shall be collected by the Committee by assessment.

(d) The Management Committee shall have non-exclusive easements to make such use of the Common Areas as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration.

13. Change in Ownership. The Management Committee shall maintain up-to-date records showing the name of each person who is an Owner, the address of such person, and the Unit which is owned by him. In the event of any transfer of a fee or undivided fee interest in a Unit either the transferor or transferee shall furnish the Management Committee with evidence establishing that the transfer has occurred and that the Deed or other instrument accomplishing the transfer is of record in the office of the County Recorder of Cache County, Utah. The Management Committee may for all purposes act and rely on the information concerning Owners and Unit ownership which is thus acquired by it or, at its option, the Management Committee may act and rely on current ownership information respecting any Unit or Units which is obtained from the office of the County



Recorder of Cache County, Utah. The address of an Owner shall be deemed to be the address of the Unit owned by such person unless the Management Committee is otherwise advised in writing.

14. Assessments. Every Unit Owner shall ( in accordance with the provisions of paragraph 19 below) pay his equal share of the Common Expenses. Payment thereof shall be in such amounts and at such times as the Management Committee determines in accordance with the Act, the Declaration or the Bylaws. There shall be a lien for nonpayment of Common Expenses as provided by the Act. No assessment for a single improvement in the nature of a capital expenditure which exceeds the sum of \$20,000 shall be made without the same having been first voted on and approved by at least a majority of the Project's undivided ownership interest. Notwithstanding any other provision of these covenants, no assessment shall be made on any units or land (Convertible or otherwise) owned by the developer until the last unit in any phase has been sold or so long as the developer owns said unit for resale, including units that have been sold and repossessed by developer and are being marketed.

15. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Units upon the Land 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.

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.

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

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.

16. Destruction or Damage. In the event of destruction or damage of part or all of the improvements in the Project, the procedures of this section shall apply.

(a) If proceeds of the insurance maintained by the Management Committee are alone sufficient to repair or reconstruct the damaged or destroyed improvement, such repair or reconstruction shall be carried out.

(b) If less than 75% of the Project's improvements are destroyed or substantially damaged, and if proceeds of the insurance maintained by the Committee are not alone sufficient to accomplish repair or reconstruction, restoration shall be carried out and all of the Units shall be assessed for any deficiency on the basis of their respective ownership interest.



(c) If 75% or more of the Project's improvements are destroyed or substantially damaged, if proceeds of the insurance maintained by the Management Committee are not alone sufficient to accomplish restoration, and if the Unit Owners within 100 days after the destruction or damage by a vote of at least 75% of the entire undivided ownership interest in the Project elect to repair or reconstruct the affected improvements, restoration shall be accomplished in the manner directed under subsection (b) above.

(d) If 75% or more of the Project's improvements are destroyed or substantially damaged, if proceeds of the insurance maintained by the Committee are insufficient to accomplish restoration, and if the Unit Owners do not, within 100 days after the destruction or damage and by a vote of at least 75% of the entire undivided ownership interest in the Project, elect to repair or reconstruct the affected improvements, the Management Committee shall promptly record with the Cache County Recorder a notice setting forth such facts. Upon the recording of such notice the provisions of subsections (1) through (4) of Section 57-8-31, Utah Code Annotated (1953), as amended from time to time, shall apply and shall govern the rights of all parties having an interest in the Project or any of the Units.

(e) Any reconstruction or repair which is required to be carried out by this section shall be accomplished at the instance and direction of the Management Committee. Any question regarding the extent of damage to or destruction of Project improvements shall be made by an MAI appraiser selected by the Management Committee who shall determine the figure representing the percentage of project improvements which have been destroyed or substantially damaged.

(f) Other Provisions for Protection of First Lien Holders. The following protections for the benefit of first mortgage holders are provided:

(1) Any restoration or repair of the condominium after a partial condemnation or damage due to an insurable hazard shall be substantially in accordance with the declaration and the original plans and specifications unless the approval of the eligible holders of first mortgages on units to which at least 51% of the votes of units subject to mortgages held by such eligible holders are allocated, is obtained.

(2) Any election to terminate the condominium regime after substantial destruction or a substantial taking in condemnation of the condominium property must require the approval of the eligible holders of first mortgages on units to which at least 51% of the votes of units subject to mortgages held by such eligible holders are allocated.

(3) Unless the formula for reallocation of interests in the common elements after a partial condemnation or partial destruction of the condominium project is fixed in advance by the declaration or by applicable law, no reallocation of interests in the common elements resulting from a partial condemnation or partial destruction of the condominium project may be effected without the approval of the eligible holders of first mortgages on units to which at least 51% of the votes of units subject to mortgages held by such eligible holders are allocated.

NOTE: As used in this Declaration, the term "eligible holder, insurer or guarantor" shall mean a holder, insurer or guarantor of a first mortgage on a unit in a condominium which has requested notice in accordance with the provisions of Section 34.

17. Taxes.

(a) Unit Responsibility. It is understood that under the Act each Unit, together with its undivided interest in the Common Areas and Facilities in the Project, is deemed a parcel and subject to separate assessment and taxation by each assessing unit and special district for all types of taxes authorized by law. Each Unit Owner will, accordingly, pay and discharge any and all taxes which may be assessed against his Unit.

(b) Special Assessments for Capital Improvements. In addition to the annual assessments, 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 majority of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

18. Insurance. All Owners of Units will provide their own hazard (e.g. fire, theft, natural disaster, flood, wind) and/or public liability insurance homeowner policy on the contents of the Unit owned by them. The Cluster Unit Owners shall carry and provide their own "Homeowner's Policy" and the Condominium and Townhouse Unit Owners shall carry and provide their own "Condominium Owner's Policy." These Unit owner's policies should respectively cover all the improvements which are inside of the respective unit including, but not necessarily limited to the partitions, sheet rock, plumbing, electrical, fixtures, floor coverings, millwork and finish work interior of the units. The Condominium and Townhouse Owner's Association shall maintain the following insurance:

(a) Hazard Insurance. The Management Committee or Association of Unit Owners shall, as a common expense, at all times maintain in force hazard insurance meeting the following requirements:

(1) A multi-peril type "master" or "blanket" policy covering the entire Project (except land, foundation excavation and other items normally excluded from coverage) including fixtures to the extent they are part of the common elements of the Project, building service equipment and supplies and other common property belonging to the Association. In addition, any fixture, equipment or other property within the Units which are financed by any mortgage to be purchased by FNMA or FHLMC (regardless of whether such property is or is not part of the common elements) shall (to the extent required under HUD-FHA Land Use Planning Bulletin No. 6) be covered in such master or blanket policy which meets the minimum requirements of said Bulletin No. 6. Such policy shall provide coverage against loss or damage by fire and other hazards covered by the standard extended coverage endorsement, debris removal, cost at demolition, vandalism, malicious mischief, windstorm, water damage, and such other risks as customarily are covered with respect to projects similar to the Project in construction, location, and use. As a

minimum, such policy shall provide coverage on a replacement cost basis in an amount not less than that necessary to comply with any coinsurance percentage specified in the policy, but not less than one hundred percent (100%) of the full insurable value (based upon replacement cost).

(2) The named insured under each policy required to be maintained by the foregoing item (1) shall be in form and substance essentially as follows: "Cobblestone at Spring Creek Condominium Onwner's Association, or its authorized representative, for the use and benefit of the Individual Owners."

(3) Each such policy shall include the standard mortgage clause (without contribution) which either shall be endorsed to provide that any proceeds shall be paid to the Association of unit Owners for the use and benefit of Mortgagees as their interests may appear or shall be otherwise endorsed to fully protect the interests of Mortgagees. In addition, the mortgagee clause shall provide that the insurance carrier shall notify each Eligible Mortgagee at least thirty (30) days in advance of the effective date of any reduction in coverage, substantial modification or cancellation of the policy.

(4) Each such policy shall provide that notwithstanding any provision thereof which gives the carrier the right to elect to restore damage in lieu of making a cash settlement, such option shall not be exercisable if it is in conflict with any requirement of law or without the prior written approval of the Association.

(b) Fidelity Insurance. The Management Committee or Association shall at all times maintain in force fidelity coverage against dishonest acts on the part of managers (and employees of manager), trustees, employees, officers, Committee members, or volunteers responsible for handling funds belonging to or administered by the Management Committee or Association of Unit Owners. The fidelity bond or insurance shall name the Association as the obligee or insured and shall be written in an amount sufficient to afford the protection reasonably necessary, but in no event less than one hundred fifty percent (150%) of the estimated annual operating expenses of the Project including reserve funds, unless a greater amount is required by a majority of the Mortgagees or their designees. Such fidelity bond or insurance shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression. In addition, the mortgagee clause shall provide that the insurance carrier shall notify each Eligible Mortgagee at least thirty (30) days in advance of the effective date of any reduction in or cancellation of the policy.

(c) Liability Insurance. The Management Committee or association of Unit Owners shall at all times maintain in force a Comprehensive policy of public liability insurance covering all of the Common Areas and Facilities. Such insurance shall include a "Severability of Interest Endorsement" or its equivalent which shall preclude the insurer from denying the claim of a Unit Owner because of negligent acts of other Owners, the Management Committee, or the Association of Unit Owners. The coverage afforded by such public liability insurance shall include protection against water damage liability, liability for non-owned and hired automobiles, liability for property of others, and such other risks as customarily are covered with respect to projects similar to the Project in construction, location and use. The limit of liability under such insurance

shall not be less than \$1,000,000 for all claims for personal injury and/or property damage arising out of a single occurrence.

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(d) General Requirements Concerning Insurance. Each insurance policy or fidelity bond maintained pursuant to the foregoing Sections 18(a) through 18(c) shall be written by an insurance carrier which is licensed to transact business in the State of Utah. No such policy or fidelity bond shall be maintained where: (1) under the terms of the carrier's charter, bylaws, bond or policy, contributions may be required from, or assessments may be made against, a Unit Owner, a Mortgagee, the Management Committee, the Association of Unit Owners, a Unit, the Common Areas, or the Project; (2) by the terms of the carriers charter, bylaws, bond or policy, loss payments are contingent upon action by the carrier's board of directors, policy holders, or members; (3) the bond or policy includes any limiting clauses (other than insurance conditions) which could prevent the party entitled from collecting insurance proceeds; or (4) the bond or policy provides that the insurance thereunder shall be brought into contribution with insurance purchased by the individual Unit Owners or their Mortgagees. Each such fidelity bond or policy shall provide that: (a) coverage shall not be prejudiced by any act or neglect of the Unit Owners when such act or neglect is not within the control of the Association of Unit Owners or the Management Committee; (b) coverage shall not be prejudiced by any failure by the Association or Committee to comply with any warranty or condition with regard to any portion of the Project over which the Association and Committee have no control; (c) coverage may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days prior written notice to any and all insureds named therein, including any Mortgagee named as an insured; and (d) the insurer waives any right to subrogation it might have as to any and all claims against the Association, the Management Committee, and Unit Owner, and/or their respective agents, employees or tenants. If due to changed circumstances, excessive cost, or any other reason, any of the insurance coverage required to be obtained and maintained under Sections 18(a) through 18(c) hereof cannot reasonably be secured, with respect to such coverage the Association or the Committee shall obtain and maintain such substitute, different or other coverage as may be reasonable and prudent under the circumstances as they then exist, however the Association shall not self insure.

(e) Additional Provisions. The following additional provisions shall apply with respect to insurance:

(1) In addition to the insurance described above, the Committee shall secure and at all times maintain insurance against such risks as are or hereafter may be customarily insured against in connection with projects similar to the Project in construction, nature, and use.

(2) The Committee shall have authority to adjust losses.

(3) Insurance secured and maintained by the Committee shall not be brought into contribution with insurance held by the individual Unit Owners or their mortgagees.

(4) Each policy of insurance obtained by the Committee shall, if possible, provide: A waiver of the Insurer's subrogation rights with respect to the Committee, the Manager, the Unit Owners, and their respective servants, agents, and guests; that it cannot be canceled, suspended, or invalidated due to the conduct of any member, officer, or employee of the Committee