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Ent 889574 Bk 1351 Pg 1396
Date 5-May-2005 3:48PM Fee \$94.00
Michael Bleed, Rec. - Filed By SA
Cache County, UT
For BEARNSON & PECK LC

**DECLARATION OF PROTECTIVE EASEMENTS,
COVENANTS, CONDITIONS AND RESTRICTIONS
(Including Homeowner Association By-Laws)**

for

SUNSETPARKS P.U.D.

AN EXPANDABLE PLANNED UNIT DEVELOPMENT, PHASE I

Nibley, Cache County, Utah

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THIS DECLARATION OF PROTECTIVE EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS (this "Declaration") is made and executed this ____ day of _____, 2005, by Sunsetparks, Inc. ("Declarant"), in its capacity as the owner and developer of Sunsetparks P.U.D. (the "PUD"), a planned unit development in Nibley, Cache County, Utah.

RECITALS

WHEREAS, Declarant will develop the PUD in accordance with this Declaration and applicable laws;

WHEREAS, the purpose of this Declaration is to: (i) protect and preserve the value and amenities of the individual Lots in the PUD; (ii) protect and preserve the value and amenities of the entire PUD; and (iii) establish a homeowners association that will enforce the provisions of this Declaration and promote the welfare and safety of the Lot Owners in the PUD.

ARTICLE I - SUBMISSION

The Declarant, owner in fee simple of the Property particularly described in Exhibit "A" attached to this Declaration, located in Cache County, Utah (the "Property"), hereby submits the Property, together with the buildings and all improvements, easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the Property, to be known as Sunsetparks P.U.D., to the protective easements, covenants, conditions and restrictions described in this Declaration.

ARTICLE II - DEFINITIONS

When used in this Declaration and in the By-Laws, which are made a part of this Declaration and are attached to this Declaration as Exhibit "B," the following terms have the meaning indicated.

2.01 "Association" means all of the Lot Owners in the PUD acting as the Sunsetparks P.U.D. Homeowners Association in accordance with the Declaration and By-Laws.

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2.02 "Board of Trustees" or "Trustees" means the Board of Trustees of the Sunsetparks P.U.D., as it exists at any given time, with the duties of a board of directors as set forth in the Utah Revised Nonprofit Corporation Act, Utah Code Ann. § 16-6a-101, *et seq.*

2.03 "By-Laws" means and refer to the By-Laws of the Association as set forth in Exhibit B attached to this Declaration, as the same may be supplemented or amended from time to time.

2.04 "Common Areas" means and includes:

(i) All portions of the PUD not specifically included within individual Lots or deeded in fee to the City of Nibley.

(ii) All facilities, open space, sidewalks, walkways, roads, parking spaces not within individual Lots, and storm water retention areas designated as such in the Plat of the PUD.

(iii) The "City Trail" and the perimeter landscape and park strip at the southwest corner of the PUD.

(iv) All utility lines from the point of connection with the utility provider's to the point of connection with individual Lots;

(v) All other parts of the PUD normally in common use, or necessary or convenient to the use, existence, maintenance, safety or management of the other common areas;

(vi) Generally all furniture, furnishings, equipment, facilities, and other property (real, personal, or mixed) and interests therein at any time leased, acquired, owned, or held by the Association for the use and benefit of all of the Owners and all other property (real, personal or mixed) hereafter purchased in accordance with this Declaration.

2.05 "Common Expenses" means all sums expended on behalf of all the Lot Owners and all sums that are required by the Board of Trustees to perform or exercise its functions, duties or rights under this Declaration, any Management Agreement for the operation of the PUD, and such Rules and Regulations as the Board of Trustees may, from time to time, make and adopt. By way of illustration but without limitation, Common Expenses includes:

(i) Expenses related to administration of the Association and Common Areas, including but not limited to management fees and expenses, legal and accounting fees, insurance premiums, and similar expenses;

(ii) Expenses related to maintenance, operation, repair, or replacement of the Common Areas, including but not limited to real property taxes, special assessments, insurance premiums, landscaping, irrigation, utility charges (including utility charges to the Lots to the extent not separately metered or billed), snow removal, trash removal, and repair of roads, sidewalks, utility lines, improvements, and structures in Common Areas;

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- (iii) Expenses related to maintaining the Front Yards of Lots;
- (iv) Expenses agreed upon by the Association and lawfully assessed against the Owners in accordance with this Declaration or the By-Laws; and
- (v) Any valid charge against the PUD as a whole.

2.06 "Common Profits" means the balance of income, rents, profits, and revenues from the Common Areas remaining after deduction of the Common Expenses.

2.07 "Declaration" means this instrument, as the same may be supplemented or amended from time to time.

2.08 "Declarant" means Sunsetparks, Inc., a Utah corporation, its successors and assigns if such successors and assigns are Owners of all or any portion of the Property and are designated by the Declarant to perform the obligations or succeed to the rights of Declarant under this Declaration.

2.09 "Front Yard" means that point from the lateral fence (which begins on the side of each House approximately ten (10) feet behind the front corner of the House and extends laterally to the adjoining house or Lot boundary, if there is no adjoining House) to the street, but not including the driveway or walkway, of any Lot.

2.10 "House" means a single, detached, residential structure located on a Lot in the PUD.

2.11 "Lot" means any of the separately numbered, individually described lots within the PUD as designated on the Plat and intended for single family residential use.

2.12 "Lot Number" means the number that designates a Lot in the Plat attached to this Declaration as Exhibit "C."

2.13 "Lot Owner," "Home Owner," or "Owner" means the person who is the owner of record (as reflected in the Public Records of Cache County) of a fee or undivided fee interest in any Lot and a Lot Percentage Interest in the Common Areas which is appurtenant thereto. If a Lot is the subject of an executory contract of sale, the contract purchaser must, upon notice to the Board of Trustees by the Purchaser (unless the seller and purchaser have otherwise agreed and have informed the Board in writing of such agreement) be considered the Lot Owner for purposes of voting and Board membership.

2.14 "Majority of Owners" means the Owners of the Lots to which more than fifty percent (50%) of the votes in the Association appertain.

2.15 "Manager" means any person or entity appointed or employed as Manager by the Association.

2.16 "Mortgage" means any mortgage, deed of trust, or other security instrument by which a Lot or any part of a Lot is encumbered. First mortgage refers to a mortgage that has a lien position prior to any other mortgage.

2.17 "Mortgagee" means any person named as a Mortgagee or beneficiary under (or holder of) a deed of trust or mortgage.

2.18 "Percentage Interest" means the percentage undivided interest of each Lot in the Common Areas as set forth in Article III, Section 5.

2.19 "Plat" means the Plat filed simultaneously with this Declaration, consisting of one sheet, prepared and certified by Cache-Landmark Engineering, Inc. and Steven C. Earl.

2.20 "Property" means the land in Phase I of the PUD that is described in Exhibit "A," including Lots, Common Areas, streets, buildings, improvements and structures thereon, all easements, rights and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith.

2.21 "PUD" means the Sunsetparks P.U.D.

2.22 "Rules and Regulations" means those rules and regulations adopted from time to time by the Board of Trustees that are deemed necessary for the use and enjoyment of the PUD, provided they are not in conflict with this Declaration.

ARTICLE III – COVENANTS, CONDITIONS AND RESTRICTIONS

The Property is submitted subject to the following protective easements, covenants, conditions, and restrictions.

3.01 Description of Improvements. The improvements included in this PUD are now (or will be) located on the Property described in Exhibit "A" attached to this Declaration.

3.02 Description of Legal Status of Lots. All Lots are residential Lots. All Lots are capable of being independently owned, encumbered, and conveyed.

3.03 Contents of Exhibit "C". Exhibit "C" to this Declaration is a copy of the Plat providing the Lot Number, dimensions, and square footage of each Lot.

3.04 Use and Maintenance of Common Areas. The Common Areas contained in the PUD are described and identified in Section 2.04 of this Declaration. Neither the Percentage Interest nor the
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right of use of Common Areas may be separated from the Lot to which it appertains; and even though not specifically mentioned in the instrument of transfer, the Percentage Interest and such right of use shall automatically accompany any transfer of the Lot to which they relate.

(a) Limitations of Use. The use of the Common Areas is limited to Owners in residence, to their tenants in residence, and to Owners' guests and invitees. The use of the Common Areas is governed by this Declaration and the Rules and Regulations as initially established by the Declarant and as adopted and amended from time to time by the Board of Trustees.

(b) Association Responsibilities. The Association will be responsible for maintenance, operation and repair of all Common Areas, including but not limited to the following: (i) maintenance of all landscaping in Common Areas, including watering and trimming; (ii) maintenance and repair of all structures and improvements in Common Areas; (iii) maintenance of all open space in Common Areas; and (iv) maintenance and repair of sidewalks, walkways, private roads, utility lines, and parking spaces in Common Areas. In addition, the Association will be responsible for plowing and shoveling snow from roads, sidewalks, walkways, and driveways; however, the Association will not be liable for the timeliness of such shoveling or for icy or slick sidewalks, walkways, or driveways. The expenses incurred by the Association in fulfilling its obligations under this Section 3.04b. will be paid for with funds from Assessments as provided in Section 3.21.

(c) Landscaping and Tree-trimming Standards. It is intended by this Declaration that Common Areas in the PUD be well maintained and attractive so as to preserve and enhance the value of all the Lots for their Owners. Accordingly, the landscaping in the Common Areas must be installed and maintained in keeping with best management practices and the *Standards of the American Nurserymen*. Trees in Common Areas must be trimmed by certified, professional arborists who have current membership in one of the following associations: (i) the International Society of Arboriculture (ISA); (ii) the National Arborist Association (NAA); or the American Society of Consulting Arborists (ASCA). Topping of tree limbs is not permitted in the PUD.

(d) Shielded Lighting Fixtures. All outdoor lighting fixtures in the Common Areas will be shielded and directed downward so as to preserve dark skies.

3.05 Computation of Percentage Interests. Each Lot in the PUD includes an undivided interest in the Common Areas. Each Lot Owner owns an equal, proportionate share of the Common Areas. The proportionate ownership in the Common Areas will be for all purposes, including, but not limited to, participation in Common Profits, and assessments for Common Expenses.

3.06 Association Membership. Membership in the Association is mandatory, is appurtenant to the Lot in which the Owner has the necessary interest, and may not be separated from the Lot to which it appertains. The purposes, business and affairs of the Association will be governed by the Board of Trustees as agent of the Association.

3.07 Easement of Encroachment. If any part of the Common Areas now or hereafter encroaches upon a Lot or Lots, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of Lot now or hereafter encroaches upon the Common Areas, or

upon an adjoining Lot or Lots, an easement for such encroachment and for maintenance shall and does exist. Such encroachments shall not be considered to be encumbrances either to the Common Areas or the Lots. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of facilities in the Common Areas, by error in the Plat, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of the PUD or any part of the PUD.

3.08 Access for Repair of Common Areas. The Owners of the other Lots have the irrevocable right to be exercised by the Board of Trustees, as its agent, to have access to each Lot adjacent to Common Areas in those limited instances where the only feasible access to a Common Area is through a Lot 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 Area or to another Lot or Lots. However, the Association will be responsible for paying for any damage caused to a Lot or property thereon because the Lot was used to access a Common Area.

3.09 Easement to Board of Trustees. The Board of Trustees have non-exclusive easements to make such use of the Common Areas as may be necessary or appropriate to perform the duties and functions that it is obligated or permitted to perform under this Declaration.

3.10 Easement for Utility Services. There is hereby created a blanket easement upon, across, over, and under the Property in the PUD for ingress, egress, installation, replacing, repairing, and maintaining all utilities, including but not limited to water, sewer, gas, telephones, electricity, cable, drainage, and other utility services. This blanket easement extends to all utility providers for the purpose of reading meters and maintaining the utility lines located within the PUD.

3.11 Easement for Governmental Services and Protection of Open Spaces. There is hereby created a blanket easement upon, across, over, and under the Property in the PUD in favor of the City of Nibley, Cache County, the State of Utah, and any other governmental or quasi-governmental entity for ingress and egress for purposes of providing police and fire protection and providing other governmental or municipal services. In addition, there is hereby created a permanent easement in favor of the City of Nibley in the open space shown on the recorded Plat of the PUD for the purpose of guaranteeing that such open space remains perpetually in recreation use, with ownership and maintenance being the responsibility of the Association.

3.12 Easement for Use of Common Areas. Each Lot Owner and each person lawfully residing in a Lot located on any portion of the described land in the PUD is hereby granted a non-exclusive right and easement of enjoyment in common with others of the Common Areas of the PUD.

(a) Limitations. The right and easements of enjoyment created in this Section are subject to the following:

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(i) The right of the Declarant, before termination of the period of Declarant's control, to grant and reserve easements and rights-of-way through, under, over and across the Common Areas for the installation, maintenance, and inspection of the lines and appurtenances for public or private water, sewer, drainage, gas, electricity, telephone and other utilities; and

(ii) The right of the Board of Trustees to adopt Rules and Regulations governing the use by the Owners of the Common Areas.

(b) **Delegation.** Any person having the right to use and enjoy the Common Areas may delegate such rights to the members of such person's family, tenants who reside in the PUD, and to such other persons as may be permitted by the Board of Trustees.

(c) **Compliance with Rules and Regulations.** Each person having the right to use the Common Areas and each person to whom such right has been delegated must comply with the Rules and Regulations regarding such use, as such Rules and Regulations may be established and amended from time to time by the Board of Trustees. Such rights of use may be suspended upon failure of a Lot Owner to pay the Owner's assessment; however, such suspension may only occur following notice and an opportunity for a hearing pursuant to the notice and hearing procedures set forth in Section 3.13.

3.13 **Hearings.** Before the Association, or the Board of Trustees on behalf of the Association, may take adverse action against an Owner or Owner's tenant for failure to pay assessments, damage caused to Common Areas, violations of Rules and Regulations, or similar matters, the Board of Trustees must provide the affected Owner or Owner's tenant an opportunity for a hearing in accordance with the procedures set forth in this Section 3.13.

(a) **Notice of Hearing.** The Board of Trustees shall cause to be mailed, by certified mail, a Notice of Hearing, signed by a majority of the Board of Trustees and addressed to the Owner at Owner's last mailing address as it then appears on the records of the Board of Trustees. The Notice of Hearing must include the following:

(i) A brief description of the relief sought by the Board of Trustees on behalf of the Association (e.g., payment of assessments in arrears, compensation for damages allegedly caused by the Owner's negligence) in sufficient detail so as to give the Owner adequate notice of the charges against him or her;

(ii) The Notice must include the time, date and place of the hearing. The Hearing must be held on a weekday, unless waived in writing by the Owner and Board of Trustees, and may not be set any sooner than thirty (30) days from the date the Notice is mailed to the Owner. The matter must be heard in the evening, between the hours of 5:00 p.m. and 8:00 p.m., or as agreed upon by the Board of Trustees and the Owner. The Hearing must be held in any convenient location within Cache County; and

(iii) The Notice must inform the Owner that the Owner may object to the time and/or date of the Hearing upon a showing of reasonable conflict. The objection must be mailed, postage prepaid, to the Board of Trustees fifteen (15) days before the date

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of the Hearing. The objection must also include at least three (3) dates (including times), subject to the limitations of subparagraph (ii) above, upon which Owner can attend a Hearing.

(b) Alternative Dates. The Board of Trustees may accept one of Owner's suggested dates, which it must then confirm in writing, by certified mail, or set a new date according to the procedures of subparagraph (ii) above. If the Owner has a reasonable conflict with the new date set by the Board of Trustees, the Owner may again object to either the time or date as allowed in subparagraph (iii) above. The procedures of subparagraphs (ii) and (iii) must be followed until a time, date and place are selected convenient to the Board of Trustees and the Owner.

(c) Representation by Counsel. The Owner is entitled to representation by counsel at the Hearing with the Board of Trustees. If the Owner chooses to be represented by counsel, the Owner must first notify the Board of Trustees, in writing, fifteen (15) days before the date of the Hearing in order to give the Board of Trustees the opportunity to select its own counsel to represent it at the Hearing.

(d) Hearing. At the Hearing, the Owner must be given a reasonable opportunity to efficiently and succinctly present the Owner's evidence.

(e) Decision. The Board of Trustees must render its written decision within thirty (30) days following the date of the Hearing. The written decision must be mailed to the Owner at the Owner's last known address and will be deemed a final decision in all respects.

(f) Appeal of Decision. The decision of the Board of Trustees may only be appealed to the District Court in and for Cache County, Utah in accordance with Utah law within thirty (30) days following the Owner's receipt of the Board of Trustees's written decision. The prevailing party on appeal is entitled to receive from the non-prevailing party, all reasonable attorneys' fees, expenses, and costs incurred in the appeal.

(g) Collection. Amounts owing by the Owner under the decision of the Board of Trustees shall be collected by way of assessment against the Owner's Lot.

3.14 Lot Maintenance.

(a) Maintenance of Front Yards. It is intended by this Declaration that the Houses and Front Yard of all Lots present a uniform, neat, and well maintained appearance. To achieve this purpose, the Association will prepare, improve, install, and maintain all landscaping, trees, scrubs, grass, and walkways located in the Front Yard. No changes to the landscaping of any Front Yard, including removal of existing plants and planting of new plants, may be made without first obtaining the prior written approval of the Architectural Review Committee. If the need for repair of any Front Yard is caused by the willful or negligent acts of the Lot Owner(s), or by the willful or negligent acts of the guests, tenants, or invitees of the Owner(s), then the cost of such repair shall be immediately due and payable from such Owner and added to or become a part of the assessment to which such Lot is subject.

(b) Maintenance of House and Remainder of Lot. Except for the Front Yard as provided in Section 3.14(a), each Lot Owner must maintain, at his or her own expense, the Owner's House and Lot so as not to detract from the appearance of the PUD and so as not to affect adversely the value of

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any other Lot. Each Lot Owner must keep the House on the Lot and related equipment and appurtenances in good order, condition and repair and in a clean and sanitary condition, and must do all redecorating, painting, varnishing, that may at any time be necessary to maintain the good appearance of the House. Such maintenance includes the repair or replacement of utility lines from the point that they begin to serve exclusively any one Owner's Lot. Except for the Front Yard, each Owner must maintain the landscaping on the Owner's Lot (that is, from the fence at or near the front corner of the House to the back fence of the Lot). Upon the transfer or sale of each Lot, the Declarant transfers all responsibility for maintenance of the House and Lot to the Owner of such Lot.

(c) Damage or Destruction. In the event of damage to or destruction of a House on a Lot, the Owner of the Lot on which the House is situated must either rebuild the House within a reasonable time or raze the remains of the damaged House so as to prevent the unsightly appearance and dangerous condition of a partially destroyed House in the PUD. The painting or repainting, remodeling, rebuilding or modification of any exterior portion of a House must first be submitted to and approved by the Architectural Review Committee under its procedures. No Owner of any Lot in the PUD may openly or wantonly neglect or fail to do everything reasonably possible to keep the Owner's Lot, House, and improvements on the Lot in good and attractive condition and repair at all times.

(d) Landscaping and Tree-trimming Standards. It is intended by this Declaration that Lots in the PUD be well maintained and attractive so as to preserve and enhance the value of all the Lots for their Owners. Accordingly, the landscaping in the Common Areas must be installed and maintained in keeping with best management practices the *Standards of the American Nurserymen*. Trees in Common Areas must be trimmed by certified, professional arborists who have current membership in one of the following associations: (i) the International Society of Arboriculture (ISA); (ii) the National Arborist Association (NAA); or the American Society of Consulting Arborists (ASCA). Topping of tree limbs is not permitted in the PUD.

(e) Shielded Lighting Fixtures. All outdoor lighting fixtures on Lots will be shielded and directed downward so as to preserve dark skies.

3.15 Restrictions on Houses and Lots.

(a) Description of Houses. Each House must be a detached, single story residence of wood frame construction, erected on a concrete slab with composition roof and attached garage and driveway. Garages may not be converted into additional living space. Each House must be separately metered and wired for electricity.

(b) Restrictions on Additional Structures and Modifications. Before making any exterior alterations to a House or erecting a shed or similar structure, the Owner must first obtain the written consent of the Architectural Review Committee.

(c) Restrictions on Use of Houses. Each of the Lots in the PUD is intended to be used for single family residential housing and is restricted to such use. The PUD is designed, intended and operated for occupancy by persons who are 55 years of age or older. Accordingly, the PUD has restrictions that are necessary to provide housing opportunities for older persons. At least 80 percent of the Houses in the PUD must be occupied by at least one resident who is 55 years of age or older. In addition, no more than 4 persons may occupy each House. However, the restrictions in this Section

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3.15(c) do not apply to guests occupying the House for no more than fourteen (14) days in a thirty (30) day period, or for no more than a cumulative total of thirty (30) days in any calendar year.

(i) The Declarant and the Board of Trustees of the Association are responsible for ensuring that the PUD remains housing designed for persons who are 55 years of age or older in accordance with 42 U.S.C. § 3607 of the Fair Housing Act and 24 C.F.R. 100.304-307.

(d) Restrictions on Business Activity. No trade or business may be conducted in or from any House, except that an Owner or occupant residing in the House may conduct business activities within the House so long as: (i) the existence or operation of the business activities within the House is not apparent or detectable by sight, sound, smell, or customer or employee traffic from outside the House; (ii) the business activity conforms to all zoning requirements of the PUD; (iii) the business activity is a type that is consistent with the residential character of the Property; and (iv) the business activity does not increase traffic, constitute a nuisance, hazardous, or offensive use, as may be determined by the Board in its sole discretion.

(e) No Subdivision of Lots. No Owner, by deed, plat or otherwise, may subdivide or in any manner cause the Ownership of Lot to be separated into physical tracts or parcels smaller than the whole Lot as shown on the Plat.

(f) Antennas. No television, ham radio, citizens band, or radio antennas will be permitted on any House without the prior written approval of the Board. Small satellite dishes are permitted but must be placed on the back rooftop, in the backyard, or in the side yard so that they are not visible from the street.

(g) Fences. Declarant will install a fence five-feet (5') high across the back of each Lot and a lateral fence near the front of each House separating the Front Yard from the remainder of the Lot. Home Owners may install a fence five-feet (5') high around the back yard, which is that portion of the Lot extending from the rear corner of the House laterally to the Lot line on either side and then back to the fence across the back of the Lot. To keep Front Yards and side yards open, no fences may be installed on Lot boundary lines except in the back yard. The original fencing established and installed by Declarant as part of the original design of the PUD must be preserved and maintained by the Owners and the Association, as the case may be according to the location of such fencing. Thereafter, all new or replacement fencing must be five-feet (5') high and approved by the Architectural Review Committee.

(h) Signs. Except for one (1) "For Sale," "For Rent," or similar sign of not more than five (5) square feet in size, no advertising signs or billboards may be erected, placed or permitted to remain on any Lot or House.

(i) Animals. No livestock, poultry, or animals of any kind may be kept, raised or bred on a Lot, except that no more than two (2) dogs, cats, birds and other ordinary household pets may be kept, provided they are not kept for any commercial purpose and they are kept under reasonable control at all times. Dogs must be kept on a leash at all times when in the Common Areas. Owners are responsible for keeping their pets from soiling the Common Areas and, if a pet does soil a Common Area, cleaning up after such pet. The Board may enact reasonable rules regarding keeping pets in the PUD, including noise restrictions, prohibitions on certain pets, and designation of areas where pets may

not be allowed. It is intended that all permitted pets be small household pets that are kept indoors and not left outdoors overnight. At no time may animals be kept on a Lot that result in an annoyance or that are obnoxious by noise, smell or otherwise to Lot Owners.

(j) Garbage Removal. All rubbish, trash, and garbage must be regularly removed from Lots and may not be allowed to accumulate on Lots. Garbage should be kept in proper containers. All garbage containers, including recycling containers, must be kept in sanitary condition and stored in the garage, except on collection days. No equipment, garbage cans, or storage piles may be kept outside of a House.

(k) Nuisances. Each Lot Owner, tenant, or other person in possession of a Lot is entitled to quiet enjoyment of that Lot. No noxious or offensive activity may be carried on upon any Lot or any part of the Subdivision. Nor may anything be done on a Lot or any part of the Subdivision that is, or may become, an annoyance or nuisance to the neighborhood, or that may in any way interfere with the quiet enjoyment of any Owner, or that will increase the rate of insurance of any Owner.

(l) Clothes Lines. No exterior clothes lines may be erected or maintained. Outside laundering and drying of clothes is not permitted.

(m) Power Equipment and Car Maintenance. No power equipment or car maintenance of any nature is permitted in the PUD. Provided, however, car washing and drying may be done by an Owner but only in the driveway appurtenant to that Owner's Lot.

(n) Recreational Vehicles. No boats, trailers, recreational vehicles, trucks, or commercial vehicles may be parked or stored in or upon any Common Areas or the driveways of any Lot. Boats, trailers, recreational vehicles, trucks, and commercial vehicles must be stored within a garage.

(o) Parking Restrictions. No parking is permitted on any streets or Common Areas, except designated parking spaces in Common Areas. Only one licensed, operational motor vehicle belonging to a resident or guest may be parked overnight in a driveway. Residents are not permitted to park overnight in designated parking spaces in Common Areas. Accordingly, the number of motor vehicles that may be kept in the PUD by residents of a Lot is the number of enclosed garage spaces on the Lot plus one. (Lots with two-car garages are limited to three motor vehicles; Lots with three-car garages are limited to four motor vehicles.)

(p) Window Covers. Curtains and drapes (with a white lining), shutters or blinds of neutral color may be installed as window covers. However, no window may be covered with aluminum foil or similar material. No window tinting is allowed without the prior written approval of the Architectural Committee.

(q) Outdoor Storage Restrictions. No observable outdoor storage of any kind is permitted on patios, front yards, porches and driveways, except that patio furniture and portable barbecue grills in good condition may be maintained on backyard patios.

(r) Sculptures and Flags. No outdoor sculptures, flag poles, and flags are permitted without the prior written approval of the Board.

(s) No Hazardous Materials. No Hazardous Substances may be used, stored, generated, or disposed of or on any Lot in violation of Environmental Laws. If any Hazardous Substance is used, stored, generated, or disposed of on any Lot, or if a Lot becomes contaminated in any manner by an Owner or its lessee, such Owner shall indemnify and hold harmless all other Owners from any and all

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claims, damages, fines, judgments, penalties, costs, liabilities, or losses, including, without limitation, a decrease in the value of non-contaminated Lots, damages caused by loss or restriction of usable space, or any damages caused by adverse impact on the marketing of the non-contaminated Lots, and any and all sums paid for settlement of claims, attorneys' fees, consultant and expert fees.

(i) In this Section, the term "Hazardous Substance" means any pollutants, contaminants, chemicals, waste and any toxic, infectious, carcinogenic, reactive, corrosive, ignitable or flammable chemical or chemical compound or hazardous substance, material or waste, whether solid, liquid or gas, including any quantity of asbestos in any form, urea, formaldehyde, PCBs, radon gas, crude oil or any fraction thereof, all forms of natural gas, petroleum products or byproducts or derivatives, radioactive substance, waste waters, sludges, slag and any other substance, material or waste that is subject to regulation, control or remediation under any Environmental Laws.

(ii) In this Section, the term "Environmental Laws" means all local, state, and federal laws and regulations that regulate or relate to the protection, clean-up, and restoration of the environment; the use treatment, storage, transportation, generation, manufacture, processing, distribution, handling, or disposal of, or emission, discharge, or other release or threatened release of Hazardous Substance or otherwise dangerous substances, wastes, pollution, or materials and further includes the Resource Conservation & Recovery Act, Clean Water Act, Safe Drinking Water Act, Atomic Energy Act, Occupational Safety & Health Act, Toxic Substances Control Act, Clean Air Act, Oil Pollution Act of 1990, Comprehensive Environmental Response Compensation and Liability Act, and the Hazardous Materials Transportation Act.

(t) Restrictions on Leases. Any lease of a Lot must be in writing and must provide that the terms of the lease are subject in all respects to provisions of the Declaration and By-Laws and that any failure by the lessee to comply with the terms of such documents is a default under the lease. In addition, the written lease must expressly state: (i) that the PUD is a housing community for persons at 55 years of age or older; and (ii) that the lease must be approved in advance by the Association Board of Trustees as being in compliance with Section 3.15(c) of this Declaration before taking effect. A Lot may not be leased for an initial term of less than thirty (30) days and no lease may be for less than the entire Lot.

(i) A Lot may not be leased until the Owner first obtains the written approval of the Board of Trustees for such lease. Such approval may not be unreasonably withheld. In addition, a lease of a Lot in the PUD must expressly give the Association standing as a third-party beneficiary of the lease to enforce the terms of the lease agreement, including the provisions of this Declaration and the By-Laws. Upon request of the Board of Trustees, an Owner who is leasing a Lot or proposing to lease a Lot must provide a copy of the written lease agreement to the Board of Trustees.

(ii) For purposes of this Section, rent and lease have the same meaning.

(u) Sheds. Each Lot may have a single storage shed, not to exceed the floor dimensions of 120 square feet and not to exceed 8 feet in height. The exterior finish and colors of such shed must be compatible with the House exterior. Before a shed may be erected or placed on a Lot, the Owner

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must obtain written approval of the Board, whose judgment, reasonably exercised, will be final. After approval of the Board the applicant will make application with the Planning and Zoning Commission for a conditional use permit for an accessory building.

(v) Irrigation. The Common Areas maintenance plan must provide for an irrigation system for the PUD with restricted watering days for each Lot. Each Lot Owner is bound by the schedules and rules established by the Association regarding irrigation of Lots and Common Areas. Each Owner agrees not to water his or her Lot more frequently than four times a week unless otherwise authorized by the Common Areas Maintenance Plan established by the Declarant and administered thereafter by the Association.

3.16 Restrictions on Use of Common Areas.

(a) Uses Requiring Prior Approval. There may be no obstructions of the Common Areas by the Owners, their tenants, guests or invitees without the prior written consent of the Board of Trustees. The Board of Trustees may, by Rules and Regulations, prohibit or limit the use of the Common Areas as may be reasonably necessary for protecting the interests of all the Owners or protecting the Lots or Common Areas. Nothing may be kept or stored in any part of the Common Areas without the prior written consent of the Board of Trustees, except as specifically provided in this Declaration. Nothing may be altered, constructed in or removed from the Common Areas except with the prior written consent of the Board of Trustees.

(b) Prohibited Uses of Common Areas. Nothing may be done or kept in any Lot or in the Common Areas or any part thereof that may result in the cancellation of the insurance on the PUD or any part thereof or increase the rate of insurance on the PUD or any part thereof over what the Board of Trustees, but for such activity, would pay without the prior written consent of the Board of Trustees. Nothing may be done or kept in any Lot, in the Common Areas, or any part thereof that would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to, or waste of the Common Areas or any part thereof may be committed by any Owner or any invitee of any Owner, and each Owner must indemnify and hold the Board of Trustees and the Owners harmless against all loss resulting from any such damage or waste caused by the Owner, the Owner's family, or the Owner's invitees; provided, however, that any invitee of the Declarant may not, under any circumstances, be deemed to be an invitee of any other Owner. No noxious, destructive or offensive activity may be carried on in any Lot or in the Common Areas or any part thereof, nor may anything be done therein which may be or may become an annoyance or nuisance to any other Owner or to any person at any time lawfully residing in the PUD.

(c) Rules and Regulations. No Owner, Owner's family member, tenant, employee, invitee or other person on the Property may violate the Rules and Regulations for the use of the Lots and of the Common Areas as adopted from time to time by the Board of Trustees.

3.17 No Warranty of Enforceability. Although Declarant has no reason to believe that any of the restrictive covenants contained in this Article III or elsewhere in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenants. Lot

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Owners assume all risks of the validity and enforceability of all restrictive covenants. By acquiring a Lot, an Owner agrees to hold Declarant harmless from the risk that a restrictive covenant may be invalid or unenforceable.

3.18 Status and General Authority of Board of Trustees. Notwithstanding anything herein contained to the contrary, Sunsetparks P.U.D. shall be managed, operated, and maintained by the Board of Trustees exclusively as agent of the Association, and any act performed by the Board of Trustees under this Declaration or the By-Laws shall be deemed to be performed by the Board of Trustees for and on behalf of the Association as its agent. The Board of Trustees shall have the following authority and powers:

(i) The authority, without the vote or consent of the Owners, to transfer and convey utility and similar easements over, under, across, and through the Common Areas. The authority to execute and record, on behalf of all the Lot Owners, any amendment to the Declaration or Plat which has been approved by the consent necessary to authorize such amendment.

(ii) The power to sue and be sued.

(iii) The authority to enter into contracts which in any way concern the PUD, so long as any vote or consent of the Lot Owners necessitated by the subject matter of the agreement has been obtained.

(iv) The power and authority to convey or transfer any interest in real property authorized by the Owners having an interest therein.

(v) 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 that is necessary under the circumstances.

(vi) 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 Board of Trustees deems appropriate upon the payment of fees prescribed by it to help defray the cost of maintenance thereof.

(vii) The power and authority to borrow money, provided no indebtedness for borrowed funds shall exceed at any given time the sum of Five Thousand Dollars (\$5,000.00) without the prior approval of the Majority of Owners.

(viii) The authority to promulgate such reasonable Rules and Regulations, and procedures as may be necessary or desirable to aid the Board of Trustees in carrying out any of its functions or to insure that the PUD is maintained and used in a manner consistent with the interests of the Owners.

(ix) The power and authority to perform any other acts and to enter into any other transactions which may be reasonably necessary for the Board of Trustees to perform its functions as agent for the Association.

(x) The power and authority to levy fines of \$250 or less, as determined by the Board of Trustees by majority vote, against Owners for intentional or repeated violations of this Declaration or the Rules and Regulations of the PUD. However,

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before such fines may be levied, Owners must be provided with notice and a right to a hearing as provided in Section 3.12.

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

3.19 Composition and Initial Selection of Board of Trustees. Until the election of the Board of Trustees takes place at the first annual meeting of the Association as provided in Section 3.22 of this Declaration, the Board of Trustees will consist of such persons as have been designated by the Declarant. From and after the first annual meeting of the Association, the Board of Trustees shall be composed of five (5) persons, all of whom shall be officers, directors, or designees of the Declarant, Owners or spouses of Owners, or Mortgagees (or designees of Mortgagees) of Lots. The Declarant has the right in its sole discretion to replace such members of the Board of Trustees as may be so selected and designated by it, and to select and designate their successors. In all other cases of vacancy, the remaining Board of Trustees members shall elect a replacement to sit on the Board of Trustees until the expiration date of the term for which the member being replaced was elected. Declarant may, by a written instrument duly recorded, waive its right to select the members of the Board of Trustees at any time prior to the termination of its right to select Board of Trustees members reserved under this Section 3.23.

3.20 Manager. The Board of Trustees may carry out any of its functions that are capable of delegation through a Manager for the PUD. Any Manager retained for such purpose must be an individual or entity experienced and qualified in the field of property management. The Manager so engaged shall be responsible for managing the PUD for the benefit of the Lot Owners and shall, to the extent permitted by law and the terms of the agreement with the Board of Trustees, be authorized to perform any of the functions or acts required or permitted to be performed by the Board of Trustees itself. Any Management Agreement must be terminable for cause upon thirty (30) days notice and run for a reasonable period from one (1) to three (3) years (unless negotiated by the Declarant in which case the Management Agreement shall not exceed two (2) years), and be renewable by consent of the Association and the Board of Trustees.

3.21 Owners' Agreement to Pay Assessments. Each Lot Owner by the acceptance of a deed therefor, whether or not it be expressed in the deed, or by entering into a sale or purchase contract, shall be deemed to covenant and agree with each other and with the Board of Trustees to pay annual and special assessments made by the Board of Trustees for the purposes provided in this Declaration. Such assessments shall be fixed, established, and collected from time to time in the manner provided below.

(a) **Amount of Total Annual Assessments:** The total annual assessments against all Lots shall be based upon the Board of Trustees's advance estimates of the Association's cash requirements

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to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Areas, which estimates may include, among other things: expenses of management; grounds maintenance; taxes and special assessments (until the Lots are separately assessed as provided herein); premiums for all insurance which the Board of Trustees is required or permitted to maintain; common lighting; water charges; trash collection; repairs and maintenance of the Common Areas and replacement of those elements of the Common Areas that must be replaced on a regular basis; wages for Board of Trustees employees; Manager fees; legal and accounting fees; any deficit remaining from a previous period; the maintenance of a reasonable reserve fund; and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owner under this Declaration.

(b) Apportionment of Assessments: Expenses attributed to the Common Areas and to the PUD as a whole shall be apportioned among all the Lots equally. Both annual and special assessments must be fixed at a uniform rate for all Lots.

(c) Notice of Annual Assessments and Time for Payment Thereof: Annual assessments shall be made on a calendar year basis. The Board of Trustees shall give written notice to each Owner as to the amount of the annual assessment with respect to the Owner's Lot not less than thirty (30) days nor more than ninety (90) days before the beginning of the next calendar year. Such assessments shall be due and payable in a single installment within thirty (30) days after written notice of the amount of the assessment shall have been given to the respective Owner of a Lot. Each assessment shall bear interest at the rate of twelve percent (12%) per annum from the date it becomes due and payable if not paid within thirty (30) days after such date. Failure of the Board of Trustees to give timely notice of any assessment as provided herein shall not effect the liability of the Owner of a Lot for such assessment, but the date when payment shall become due in such case shall be deferred to a date thirty (30) days after such notice shall be given.

(d) Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Board of Trustees may, in any assessment year, levy a special assessment, payable over such a period as the Board of Trustees may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Common Areas of the PUD or any part thereof, or for any other expense incurred or to be incurred as provided in this Declaration. This Section shall not be construed as an independent source of authority for the Board of Trustees to incur expenses, but shall be authorized by other Sections in this Declaration. Any amounts assessed under this paragraph shall be assessed to the Owners in proportion to their respective Percentage Interests in the Common Areas. Notice in writing of the amount of such special assessments and time for payment thereof shall be given promptly to the Owners and no payment shall be due less than thirty (30) days after such notice shall have been given. A special assessment shall bear interest at the rate of twelve percent (12 %) per annum from the date it becomes due and payable if not paid within thirty (30) days after such date. Notwithstanding anything to the contrary in this Declaration, additions or capital improvements to the Common Areas of the PUD which cost no more than Five Thousand Dollars (\$5,000.00) may be authorized by the Board of Trustees alone. Additions or capital improvements, the cost of which will exceed such amount must, prior to being constructed, be authorized by the Majority of the Owners. Any addition or capital

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improvement that would materially alter the nature of the PUD must, regardless of its cost and prior to being constructed, be authorized by vote of Lot Owners in person or by proxy of not less than sixty-seven percent (67%) of the Percentage Interest at a meeting of the Association, special or annual, at which a quorum is present.

(e) **Lien for Assessments.** All sums assessed to any Lot under this Declaration, together with interest thereon as provided herein, shall be secured by a lien on such Lot in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such Lot, except for: (i) valid tax and special assessment liens on the Lot in favor of any governmental assessing authority; and (ii) a lien for all sums unpaid on the first Mortgage, or on any Mortgage to Declarant, duly recorded in the Official Records of Cache County, Utah, including all unpaid obligatory advances to be made under such Mortgage and all amounts advanced under such Mortgage and secured by a lien thereof in accordance with the terms of such instrument. All other lienors acquiring liens shall be deemed to consent that such liens shall be inferior to future liens for assessments as provided herein whether or not such consent be specifically set forth in the instruments creating such liens.

(i) To evidence a lien for sums assessed under this Declaration, the Board of Trustees may prepare a written notice of the lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the Lot, and a description of the Lot. Such notice shall be signed by the Board of Trustees and may be recorded in the Office of the County Recorder of Cache County, Utah. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. The lien described in this paragraph may be foreclosed in the same manner in which trust deeds on real property may be foreclosed in Utah. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceedings, the costs and expenses of the filing of the notice of lien and all reasonable attorney's fees. All such costs, expenses, and fees shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Board of Trustees any assessments against the Lot which shall become due during the period of foreclosure.

(ii) After the institution of the foreclosure proceedings, the Lot Owner must pay a reasonable rental for his use of the Lot and the Board of Trustees shall, without regard to the value of the Lot, be entitled to the appointment of a receiver to collect any rentals due from the Owner or any other person. The Board of Trustees shall have the right and power to bid an amount equal to its then existing lien at the foreclosure sale or other legal sale and to acquire, hold, convey, lease, rent, encumber, use and otherwise deal with the same as the Owner hereof.

(iii) A release of notice of lien shall be executed by the Board of Trustees and recorded in the Office of the County Recorder of Cache County, Utah, upon payment of all sums secured by a lien that has been made the subject of a recorded notice of lien. Any encumbrancer holding a lien on a Lot may pay, but shall not be required to pay, any amounts secured by the lien created hereunder, and upon such payment such encumbrancer shall be subrogated to all rights of the Board of Trustees with respect to such lien, including priority. The Board shall report to any encumbrancer of a Lot any

unpaid assessments remaining unpaid for thirty (30) days after the same shall become due, provided, however that such encumbrancer first shall have furnished the Board of Trustees written notice of such encumbrance.

(f) Personal Obligation of Owner: The amount of any annual or special assessment against any Lot shall be the personal obligation of the Owner thereof to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Board of Trustees without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any personal obligation by waiving the use and enjoyment of any Common Areas or by abandoning or selling his Lot.

(g) Statement of Account: Upon payment of a reasonable fee or such other amount as may in the future be allowed by law, and upon written request of any Owner or Mortgagee, prospective Mortgagee or prospective purchaser of a Lot, the Board of Trustees shall issue a written statement setting forth: (i) the amount of the unpaid assessments, if any, with respect to such Lot; (ii) the amount of the current yearly assessment and the date that such assessment becomes or has become due; and (iii) credit for advanced payments or prepaid items, including, but not limited to, an Owner's share of prepaid insurance premiums. Such statement shall be conclusive upon the Board of Trustees in favor of persons who rely thereon in good faith. Unless such request for a statement of account shall be complied with within twenty (20) days, all unpaid assessments that became due prior to the date of making such request shall be subordinate to the lien of a Mortgagee which acquired its interest subsequent to requesting such statement. Where a prospective purchaser makes such a request, both the lien for such unpaid assessments and the personal obligations of the purchaser shall be released automatically if the statement is not furnished within the twenty (20) day period provided herein and thereafter an additional written request is requested by such purchaser and is not complied with within ten (10) days, and the purchaser subsequently acquires the Lot.

(h) Personal Liability of Purchaser for Assessment: Subject to the provisions of subparagraph (g), a purchaser of a Lot shall be jointly and severally liable with the seller for all unpaid assessments against the Lot up to the time of the grant or conveyance, without prejudice to the purchaser's right to recover from the seller the amount paid by the purchaser for such assessments.

(i) No Assessments on Unsold Lots. Notwithstanding anything to the contrary in this Section, no assessments may be levied against unsold Lots owned by Declarant in the PUD.

3.22 Transition of Management. Notwithstanding anything to the contrary contained in Section 3.18:

(a) Voluntary Transfer of Management. Declarant may, at any time, relinquish its reserved right to select members of the Board of Trustees and to transfer the management of the PUD to the Board of Trustees elected by Lot Owners. If and when the Declarant elects to do so, Declarant shall notify Owners in writing of the effective date of such transfer ("Transfer Date") at least forty-five (45) days before the transfer. Thereupon, Lot Owners shall call a meeting to elect the members of Board of Trustees to take office as of the Transfer Date. Declarant covenants to cooperate with Lot Owners in effecting orderly transition of management.

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(b) **Mandatory Transfer of Management.** Declarant must relinquish all special rights, expressed or implied, through which the Declarant may directly or indirectly control, direct, modify or veto any action of the Association, its Board of Trustees, or a majority of Lot Owners, and control of the Association will pass to the Owners of Lots within the PUD not later than the earlier of the following:

- (i) 120 days after the date by which 75% of the Lots have been conveyed to Lot purchasers; or
- (ii) At the end of seven (7) years following the first conveyance of a Lot to a purchaser.

(c) The requirements of Section 3.22 (b) do not affect Declarant's rights, as a Lot Owner, to exercise the votes allocated to Lots that Declarant owns.

3.23 **Insurance Coverage.**

(a) **Liability Insurance.** The Board of Trustees shall secure, and at all times maintain a comprehensive policy of public liability insurance insuring the Association, the Board of Trustees, the Manager, and the Lot Owners against any liability incident to ownership, use or operation of the Common Areas and public ways of the PUD or of any Lot that may arise among themselves, to the public or to any invitees or tenants of the PUD or of the Lot Owners. Limits of liability under such insurance shall be not less than One Million Dollars (\$1,000,000.00) per occurrence, for personal injury and/or property damage. Such insurance policy shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Lot Owner because of a negligent act of the Association or other Lot Owners. The scope of the coverage must include all other coverage in the kinds and amounts required by private institutional mortgage investors for similar projects in location, construction and use.

(b) **Fidelity Insurance.** The Board of Trustees shall secure, and at all times maintain fidelity coverage to protect against dishonest acts on the part of Board of Trustees Members, Manager, employees or volunteers responsible for handling funds belonging to or administered by the Association. The fidelity bond or insurance must name the Association as the named insured and shall be written in an amount sufficient to provide protection which in no event shall be less than one and one-half times the insured's estimated annual operating expenses and revenues. In connection with such coverage, an appropriate endorsement to the policy to cover any person who serves without compensation shall be added if the policy would not otherwise cover volunteers.

(c) **Insurance Against Other Risks.** In addition to the insurance and bond coverage described above, the Board of Trustees shall secure and at all times maintain insurance against such risks as are, or hereafter may be, customarily insured against in connection with all planned residential lot developments similar to the PUD in construction, nature or use.

(d) **Minimum Requirements for Insurance.** Each insurance policy or fidelity bond maintained pursuant to this Declaration must be written by an insurance carrier that is licensed to transact business in the State of Utah. No such policy or fidelity bond may 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 Lot Owner, a lienholder, the Association, a Lot, the Common

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Areas, or the Subdivision; (2) by the terms of the carrier's charter, bylaws, bond or policy, loss payments are contingent upon action by the carrier's Board of Trustees, 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 Lot Owners or their lienholders. Each such fidelity bond or policy shall provide that: (a) coverage shall not be prejudiced by any act or neglect of the Lot Owners when such act or neglect is not within the control of the Association; (b) coverage shall not be prejudiced by any failure by the Association to comply with any warranty or condition with regard to any portion of the Subdivision over which the Association has no control; and (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 lienholder named as an insured. If due to changed circumstances, excessive cost, or any other reason, any of the insurance coverage required to be obtained and maintained under this Section 3.27 cannot reasonably be secured, with respect to such coverage the Association 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 may not self insure.

(e) Loss Regarding Common Areas. The Board of Trustees have the authority to adjust losses regarding the Common Areas.

(f) Contribution or Stacking of Policies. Insurance secured and maintained by the Board of Trustees may not be brought into contribution with insurance held by individual Lot Owners or their Mortgagee.

(g) Requirements for Policies. Each policy of insurance obtained by the Board of Trustees must provide:

(i) A waiver (if available) of the insurer's subrogation rights with respect to the Board of Trustees, the Manager, the Lot Owners, and their respective servants, agents and guests;

(ii) That the policy cannot be canceled, suspended, or invalidated due to the conduct of any particular Lot Owner or Owners;

(iii) That the policy cannot be canceled, suspended, or invalidated due to the conduct of any member, officer or employee of the Board of Trustees or the Manager without a prior written demand that the defect be cured; and

(iv) That any "no other insurance clause" therein does not apply with respect to insurance held individually by the Lot Owners.

(h) Owner's Must Provide Homeowner's Insurance. Every Lot Owner must obtain standard homeowner's insurance, at the Owner's own expense, covering damage to structures on the Lot and the negligent acts of the occupants of the Lot. Such homeowner's insurance must have the effect of decreasing the amount which may be realized under any policy maintained by the Board of Trustees.

(i) Flood Insurance. If the PUD is declared to be in an area identified by the Secretary of Housing and Urban Development as an area having specialized flood hazards, a blanket policy of flood

insurance on the PUD must be maintained in the amount of the aggregate of the outstanding principal balances of the mortgage loans on the Lots comprising the PUD or the maximum coverage limit available under the National Flood Insurance Act of 1968, as amended, whichever is less. The name of the insured under each required policy must be in form and substance as that required by the Federal Home Loan Mortgage Corporation at any given time.

3.24 Certain Provisions Applicable to Declarant. Notwithstanding any other provision of this Declaration, for so long as Declarant continues to own any of the Lots, the following provisions will be deemed to be in full force and effect.

(a) **Disclaimer of Warranty.** Declarant specifically disclaims any intent to have made any warranty or representation in connection with the PUD or the Declaration, except as specifically set forth in this Declaration or in any agreement for sale of a Lot, and no person may rely upon any warranty or representation not so specifically made.

(b) **Amendments.** No amendment may be made to this Declaration without the written consent of Declarant so long as Declarant retains the ownership of two (2) or more Lots; provided, however, that the obligation to acquire written consent of Declarant will cease on a date two (2) years from the date of completion of all construction on all phases of the PUD.

(c) **Declarant's Right to Market Lots.** Notwithstanding anything to the contrary in this Declaration, unless the Declarant has completed and sold all the Lots in the PUD, neither the Lot Owners who have purchased Lots from the Declarant nor the Board of Trustees may interfere with the completion of improvements and sale of the remaining Lots in the PUD. The Declarant reserves the right to use any Lots owned by the Declarant as models, management offices, or sales offices until such times as Declarant conveys title thereto to Lot Owners. Declarant reserves the right to relocate same from time to time within the PUD; upon relocation or sale of a model, management office or sales office, the furnishings thereof may be removed. Declarant further reserves the right to maintain on the PUD such advertising signs which may be placed in any location on the PUD and may be relocated or removed all at the sole discretion of Declarant.

(d) **Declarant's Voting Rights.** So long as Declarant retains the ownership of two (2) or more Lots, Declarant will have three votes for each Lot Declarant owns (as opposed to one vote per Lot for each of the other Lot Owners) on any matter requiring a vote of the Lot Owners; provided, however, that Declarant's rights as provided in this Subsection 3.28(d) shall cease on a date two (2) years from the date of completion of all construction on all phases of the PUD.

3.25 Amendment. For the first thirty years after the recording of this Declaration, the vote of at least sixty-seven percent (67%) of the Percentage Interest of the Lot Owners in person or represented by proxy at a meeting of the Association at which a quorum is present shall be required to amend the Declaration, By-Laws, Plat, or other enabling documentation. Any such amendment so authorized by the Lot Owners shall be accomplished through the recordation of an instrument executed by the Board of Trustees. In such instrument, the Board of Trustees must certify that the vote of the Lot Owners as required by this Section for amendment has been obtained. This right of amendment is subject to the following: Notwithstanding anything to the contrary contained in the Declaration, the

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Mortgagee protection provisions of Section 3.29(c) shall be applicable to amendments to the Percentage Interest in Common Areas provisions of Section 3.05; the insurance provisions Section 3.23; and the general protections provisions of Section 3.29.

3.26 Consent Equivalent to Vote. When this Declaration requires the vote of a stated percentage of the PUD's ownership interest for the authorization or approval of a transaction, such requirements may be fully satisfied by obtaining with or without a meeting, consents in writing to such transaction from Lot Owners who collectively hold at least the necessary percentage of ownership interest.

3.27 Eminent Domain. If all or part of the Common Areas is taken, injured, or destroyed as a result of the exercise of eminent domain, each Lot Owner shall be entitled to notice thereof and to participate in the proceedings incident thereto, but in any proceeding for the determination of damages, such damages shall be determined for such taking, injury, or destruction as a whole and not for each Lot Owner's interest therein. After such determination, each Lot Owner shall be entitled to a share in the damages in the same portion as the Owner's Percentage Interest in the Common Areas.

3.28 Service of Process. Neil Anderson, whose address is 995 South Main Street, Logan, Utah 84321, is the person to receive service of process on behalf of the Declarant. The Board of Trustees shall, however, have the right to appoint a successor or substitute process agent. Such successors or substitute agent and his or her address must be specified by an appropriate instrument filed in the Office of the County Recorder of Cache County, Utah.

3.29 General Protections. Notwithstanding anything to the contrary in this Declaration:

(a) Reserve Fund. An adequate reserve fund for repair, maintenance, and replacement of those elements of the Common Areas that must be replaced on a periodic basis must be established and funded as part of the annual assessments as provided in Section 3.21, rather than by special assessments.

(b) Lease Restrictions. Any lease of a Lot must be in writing and must provide that the terms of the lease are subject in all respects to provisions of the Declaration and By-Laws and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. In addition, the written lease must: (i) state that the PUD is a housing community for persons at 55 years of age or older; and (ii) that the lease must be approved in advance by the Association Board of Trustees as being in compliance with Section 3.15(e) of this Declaration before taking effect. A Lessee and a Renter shall be treated the same. No Lot Owner may lease a Lot for an initial term of less than thirty days. No Lot Owner may lease less than the entire Lot.

(c) Supermajority Required for Amendments. The consent of Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated shall be required to materially amend any provisions of the Declaration or By-Laws, or to add any material provisions thereto, which establish, provide for, govern or regulate any of the following:

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- (i) Voting;
- (ii) Assessments, assessment liens or subordination of such liens;
- (iii) Reserves for maintenance, repair and replacement of the Common Areas;
- (iv) Insurance or fidelity bonds;
- (v) Rights of use of the Common Areas;
- (vi) Responsibility for maintenance and repair of the several portions of the PUD;
- (vii) Expansion or contraction of the Property;
- (viii) Boundaries of any Lot;
- (ix) The interests in the Common Areas;
- (x) Convertibility of Lots into Common Areas or of Common Areas into Lots;
- (xi) Leasing of Lots; or
- (xii) Imposition of any right of first refusal or similar restriction on the right of a

Lot Owner to sell, transfer or otherwise convey his or her Lot.

(d) The Board of Trustees, on behalf of the Association, must make available to all Lot Owners, lenders and the holders, insured and guarantors of the first mortgage on any Lot, current copies of the Declaration, By-Laws and other Rules and Regulations governing the PUD, and other books, records, and financial statements of the Association. The Board of Trustees must also make available to prospective purchasers current copies of the Declaration, By-Laws, other rules governing the PUD, and the Association's most recent annual audited financial statement, if such is prepared. "Available" as used in this paragraph means available for inspection upon request, during normal business hours or under other reasonable circumstances. The Association may require payment of reasonable copying charges for any copies it provides under this Subsection.

3.30 Duty of Owner to Pay Taxes on Lot. It is understood that each Lot (and its Percentage Interest in the Common Areas) in the PUD is subject to a separate assessment and taxation by each taxing authority and special district(s) for all types of taxes and assessments authorized by law, and that as a result thereof, no taxes will be assessed or levied against the PUD as such, except for certain personal properties thereof. Accordingly, each Lot Owner will pay and discharge any and all taxes and assessments that may be assessed against his or her Lot.

3.31 Covenants to Run With Land: Compliance. This Declaration and all its provisions constitute covenants to run with the land or equitable servitudes, as the case may be, and is binding upon and shall inure to the benefit of the Declarant and all parties who hereafter acquire any interest in a Lot or in the PUD, and their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or occupant of a Lot, their family members, guests, invitees and other persons must comply with, and all interests in all Lots are subject to, the terms of this Declaration, the By-Laws, and the provisions of any Rules and Regulations, agreements, instrument, and determinations contemplated by this Declaration, and failure to comply shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the Board of Trustees on behalf of all Lot Owners, or, in a proper case, by an aggrieved Lot Owner. By acquiring any interest in

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a Lot or in the PUD, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

3.32 Conveyancing of Lot Leases.

(a) **Board Notification.** Any Lot Owner who sells, leases, or otherwise disposes of his Lot must submit to the Board of Trustees pertinent information regarding the transferee or new occupant at least 2 weeks before any transfer of title or possession on a form furnished by the Board of Trustees so that the Board may take the necessary steps to ensure that at least 1 prospective resident will be at least 55 years of age or older or that the transfer otherwise complies with Section 3.15(c) of this Declaration.

(b) **Purchaser or Lessee Notification.** Before selling, leasing or otherwise disposing of a Lot, an Owner must provide a copy of this Declaration, the By-Laws and the current Rules and Regulations to the person(s) proposing to purchase, lease or otherwise assume control of a Lot. In addition, an Owner must inform a prospective purchaser or lessee that the PUD is designed as a housing community for persons who are 55 years of age or older and that any sale, lease, or other disposition of a Lot must comply with Section 3.15(c) of this Declaration.

(c) **Form of Conveyance.** Any deed, lease, mortgage, deed of trust, purchase contract or other instrument conveying or encumbering title to a Lot shall describe the interest or estate involved substantially as follows:

Lot No. _____ as identified in the Sunsetparks P.U.D., recorded in the office of the Cache County Recorder as Entry No. _____, Map Filing No. _____, SUBJECT TO the Declaration of Protective Easements, Covenants, Conditions and Restrictions of Sunsetparks P.U.D. recorded in the office of the Cache County Recorder as Entry No. _____, Book _____, at Page _____ (as such Declaration may have been amended or supplemented), TOGETHER WITH a right and easement of use and enjoyment in and to the Common Areas described, and as provided for, in such Declaration of Protective Easements, Covenants, Conditions and Restrictions (as such Declaration may have been amended or supplemented).

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

ARTICLE IV – ARCHITECTURAL REVIEW

4.01 **Original Construction.** Declarant intends to develop the Lots and construct Houses in accordance with applicable municipal approvals, planning and zoning approvals and permits, development agreements and construction plans and specifications (together called "design guidelines"). All original construction by Declarant under the design guidelines, as they may be amended from time to time, are hereby approved.

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4.02 Architectural Review Committee. The Board of Trustees must appoint a three-member Architectural Review Committee (as used in this Article IV, the "Committee"), the function of which will be to ensure that all improvements and landscaping within the PUD harmonize with existing surroundings and structures. The Committee need not be composed of Owners. If such a Committee is not appointed, the Board of Trustees itself, or certain appointed members thereof, will perform the duties required of the Committee.

4.03 Submission to Committee. Except for structures constructed, erected or installed by Declarant, no house or other permanent structure on a Lot may be constructed or maintained, and no alteration, repainting, or refurbishing of the exterior of any house or any part thereof (except glass surfaces) shall be performed, unless complete plans and specifications therefor have first been submitted to and approved by the Committee.

4.04 Standard. In deciding whether to approve or disapprove plans and specifications submitted to it, the Committee shall use its best judgment to insure that all improvements, construction, landscaping, and alterations on Lots within the PUD conform to and harmonize with the design guidelines and with existing surroundings and structures. Any structure hereafter constructed on any Lot in replacement of the structure previously located thereon shall be constructed in substantially the same configuration, location and architectural style and be approximately the same size as the prior structure; and, if the plans and specifications therefor meet such criteria, the Committee must approve the same.

4.05 Approval Procedure. Any plans and specifications submitted to the Committee must be approved or disapproved by it in writing within 45 days after submission; provided, however, that plans and specifications for any replacement structure to be constructed in substantially the same configuration, location, architectural style and to be of substantially the same size as its predecessor shall be approved or disapproved within 15 days after submission. In the event the Committee fails to take any action within such specified periods, it shall be deemed to have approved the material submitted except in those respects that such material is not in conformity with the provisions of this Declaration, as to which respects it shall be deemed disapproved.

4.06 Construction. Once begun, any improvements, construction, landscaping, or alterations approved by the Committee shall be diligently prosecuted to completion. If reasonably necessary to enable such improvement, construction, landscaping, or alteration, the person or persons carrying out the same shall be entitled to temporarily use and occupy portions of the Common Areas in the vicinity of the activity provided that they shall promptly restore such areas to their prior condition when the use thereof is no longer required.

4.07 Liability for Damages. Neither the Committee nor any member thereof shall be held liable for damages by reason of any action, inaction, approval, or disapproval taken or given without malice by such member or the Committee with respect to any request made under this Article IV.

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4.08 Declarant's Obligations. Declarant hereby covenants in favor of each Owner (a) that all Lots to be erected by it and all improvements of the Common Areas to be accomplished by it in the PUD will be architecturally compatible with respect to one another; and (b) that on the date on which this Declaration is recorded in the Public Records, all Lots and Common Areas of the PUD will be located approximately in the locations shown on the Plat.

ARTICLE V – MISCELLANEOUS PROVISIONS

5.01 Indemnification of Board of Trustees. Each member of the Board of Trustees shall be indemnified and held harmless by the Association against all costs, expenses and fees reasonably incurred by the member in connection with any proceeding to which the member may become involved by reason of being or having been a member of the Board of Trustees. This indemnification does not extend to nor cover actions on the part of any member of the Board of Trustees who intentionally or knowingly violates local, state or federal laws or who clearly acts in bad faith.

5.02 Expansion of the PUD. The Property is all of the land upon which Phase I of the PUD will be developed. Multiple phases of development of the PUD are contemplated on adjoining real property. However, all additional phases will be developed in conformity with this Declaration, except that such additional phases are not reflected on the Plat for the PUD. In addition, the development of additional phases of the PUD are contingent upon the approval of Nibley City.

(a) Annexation by Declarant. Declarant may, from time to time, expand the PUD subject to this Declaration by the annexation of adjoining land. Subject to compliance with the conditions imposed by the following Subsection 5.02(b), the annexation of any such land will become effective upon the recordation in the Public Records of a Plat of such additional land signed by the owner of the additional land and of a supplemental declaration ("Supplemental Declaration") which (a) is signed by the then owner(s) of such additional lands as Declarant; (b) describes the land to be annexed; (c) declares that the annexed land is to be held, transferred, sold, conveyed, and occupied as part of the Property subject to this Declaration; and (d) sets forth such additional limitations, restrictions, easements, covenants and conditions, not inconsistent with those of this Declaration, as may be applicable to the annexed land. When any such annexation becomes effective, the annexed land will become part of the Property and the PUD and subject to the provisions of this Declaration and any amendment or supplement to this Declaration.

(b) Limitation on Annexation. Declarant's right to annex land to the Development is subject to the following limitations:

(i) Declarant may not effectuate any annexation of land that would cause the total number of Lots existing in the PUD to exceed 110.

(ii) The holder of each mortgage, deed of trust or other security device affecting any part of additional land being annexed into the PUD must consent, through appropriate instruments to be recorded in the Public Records, to the recordation of the Supplemental Declaration and to the Plat to which such Supplemental Declaration relates;

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(iii) The additional land added to the Development must be subdivided into Lots and Common Areas designed to be used for purposes similar to those contemplated by this Declaration, with all Houses and Lots being similar in concept to that of such Houses, Lots and uses in the Plat; provided, however, that in each succeeding phase of the Development, the architectural style of the Houses within such phase must remain consistent throughout such succeeding phase and in harmony with that of prior phases; and

(iv) Declarant's right to annex land to the PUD expires 10 years after this Declaration is recorded in the Public Records of Cache County.

(c) No Obligation to Annex or Develop. Declarant has no obligation to annex any additional land to the PUD or to develop or preserve any additional land in any particular way or according to any particular time schedule.

5.03 Invalidity. The invalidity of any provisions of this Declaration, or any portion thereof, shall not be deemed to impair or affect in any manner the validity, enforceability, or effect of the remainder of this Declaration and, in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

5.04 Waiver. No provision contained in this Declaration may be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches that may occur.

5.05 Singular and Plural: Masculine and Feminine. The use of the singular in this Declaration refers to the plural, and vice versa, whenever the context so requires. The use of the masculine gender in this Declaration refers to the feminine, and vice versa, whenever the context so requires.

5.06 Headings. The headings appearing at the beginning of the paragraphs of this Declaration are only for convenience of reference and are not intended to describe, interpret, define, limit, extend, or otherwise affect the content, meaning, or intent of this Declaration or any paragraph or provisions of this Declaration.

5.07 Conflicts. This Declaration is set forth to comply with the requirements of applicable law. In event of any conflict between this Declaration and any provision of Utah state or local law, the provisions of the latter shall control.

5.08 Effective Date. This Declaration takes effect upon recording in the Office of the County Recorder of Cache County, Utah. This Declaration will run with and bind the Property for a term of thirty (30) years from the date this Declaration is recorded, after which time it will be automatically extended for successive periods of ten (10) years each unless terminated by written agreement of sixty-seven percent (67%) of all Owners and Mortgagees.

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5.09 **Enforcement of Restrictive Covenants.** Each Lot Owner, tenant, subtenant or other occupant of a Lot in the PUD must comply with the restrictive covenants set forth in this Declaration. By acquiring any interest in a Lot in the PUD, the party acquiring such interest consents to, and agrees to be bound by, each and every one of the restrictive covenants. The Board, on behalf of the Association, has the authority to bring a civil action (at law or equity) or other proceeding to enforce the restrictive covenants set forth in this Declaration. If an action is brought to enforce one or more of these restrictive covenants, the prevailing party in such action is entitled to an award of the reasonable costs incurred in bringing the action, including attorneys' fees and court costs.

IN WITNESS WHEREOF, the undersigned, as executed this instrument on this _____ day of May, 2005.

DECLARANT
Sunsetparks, Inc.:

Randy Gnehm
Its: President

STATE OF UTAH)
 :SS
County of Cache)

On the ____ day of May, 2005, personally appeared before me, Randy Gnehm, who, being duly sworn, stated that he is President of Sunsetparks, Inc.; that the foregoing instrument was signed on behalf of the company; and that he is vested with authority to execute this instrument on behalf of the company.

Notary Public

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EXHIBIT "A" - LEGAL DESCRIPTION

**A PART OF THE NORTHEAST QUARTER OF SECTION 20,
TOWNSHIP 11 NORTH, RANGE 1 EAST, SALT LAKE MERIDIAN,
LOCATED IN THE CITY OF NIBLEY, COUNTY OF CACHE, STATE
OF UTAH, DESCRIBED AS FOLLOWS:**

**BEGINNING AT THE NORTHEAST SIXTEENTH CORNER OF
SAID SECTION 20;**

**THENCE S89°42'24"W 601.49 FEET (594 FEET B.R.) ALONG
THE NORTH SIXTEENTH LINE OF SAID SECTION;
THENCE N0°32'01"W 660.11 FEET ALONG THE EAST LINE
OF THE PARCEL DESCRIBED IN THE WARRANTY DEED
FILED AS ENTRY 184721, BOOK 76, PAGE 342, IN THE
OFFICE OF THE RECORDER OF SAID COUNTY, TO A POINT
IN THE NORTH-NORTH 1/64 LINE OF SAID SECTION:
THENCE N89°36'20"E 85.23 FEET ALONG SAID NORTH-
NORTH 1/64 LINE TO THE BEGINNING OF A CURVE,
CONCAVE TO THE SOUTH, HAVING A RADIUS OF 433.00
FEET;**

**THENCE EASTERLY 237.14 FEET ALONG THE ARC OF SAID
CURVE THROUGH A CENTRAL ANGLE OF 31°22'43" TO A
POINT OF REVERSE CURVATURE, THE BEGINNING OF A
CURVE, CONCAVE TO THE NORTH, HAVING A RADIUS OF
367.00 FEET;**

**THENCE EASTERLY 201.00 FEET ALONG THE ARC OF SAID
CURVE THROUGH A CENTRAL ANGLE OF 31°22'49";**

**THENCE N89°36'13"E 100.36 FEET TO A POINT IN THE EAST
1/16 LINE OF SAID SECTION;**

**THENCE S0°29'33"E 544.20 FEET TO THE POINT OF
BEGINNING.**

CONTAINING 8.31 ACRES, MORE OR LESS.

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EXHIBIT "B"

BY-LAWS GOVERNING SUNSETPARKS P.U.D.

A Planned Unit Development

ARTICLE I - Board of Trustees

Section 1.1 General Responsibility. The business and property comprising Sunsetparks P.U.D. (the "PUD") shall be managed by a Board of Trustees consisting of five (5) Home Owners (or Owner's designee if Owner is an entity) or Owner's spouses to be selected by the Sunsetparks PUD Homeowners Association, Inc. (the "Association"), which is all of the Home Owners in the PUD acting as a group in accordance with the Declaration and these By-Laws. The Board of Trustees has all the powers, duties, and responsibilities as are now or may hereafter be provided by law, the Declaration, and any amendments subsequently filed to the Declaration, and these By-laws as the same may from time to time be altered or amended; provided, however, subject to the limitations of Section 3.24 of the Declaration, the Board of Trustees may engage the services of a Manager and fix and pay reasonable fees or compensation therefor; and delegate duties and functions thereto; provided further, that until (i) One Hundred Twenty Days (120) days after the date by which seventy-five percent (75%) of the Lots have been conveyed to Lot Purchasers, or (ii) at the end of seven (7) years following the first conveyance of a Lot to a purchaser, whichever occurs first, each Home Owner by accepting a deed to any Lot irrevocably consents that Sunsetparks, Inc. or its designee may act as the Manager for the PUD and shall have all the rights, powers, duties and responsibilities conferred upon the Board of Trustees and Manager under the Declaration and these By-laws. The engagement of a Manager shall be a financial decision and subject to the limitations contained in Article III of the Declaration.

Section 1.2 Operation and Maintenance. The Board of Trustees is responsible for the control, operation and management of the PUD, in accordance with applicable law, the Declaration whereby the PUD is established, these By-Laws, and such administrative, management and operational Rules and Regulations as the Board of Trustees or Home Owners may adopt from time to time as herein provided, and all agreements and determinations lawfully made and entered into by the Board of Trustees. The Board of Trustees shall, in this connection, provide for the proper and reasonable control, operation and management of the PUD and of the maintenance and repair of the Common Areas and facilities appurtenant thereto. The operation of the PUD may be conducted for the Board of Trustees by a professional agent or agents, having requisite skills in planned residential unit operations and maintenance.

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Section 1.3 Housing for Older Persons. The Board of Trustees is responsible for ensuring that the PUD is operated as housing designed for persons who are 55 years of age or older as provided in 42 U.S.C. § 3607 of the Fair Housing Act, the implementing regulations in 24 C.F.R. 100.304-307, and Section 3.15(c) of the Declaration. Such responsibility includes ensuring that at least 80 percent of

the Houses in the PUD are occupied by at least one person who is 55 years of age or older. The Board must develop procedures for routinely determining the occupancy of each House, including the identification of whether at least one or more occupant of each House is 55 years of age or older. Such procedures must: (i) be part of a normal leasing or purchasing arrangement; (ii) comply with 24 C.F.R. § 100.307; (iii) require maintenance of reliable documentation of the age of the occupants of the PUD using driver's licenses, birth certificates, passports, immigration cards, military identification, other government-issued identification containing an occupant's birth date, or a certification or affidavit by a household member asserting that at least one person in the House is 55 years of age or older; and (iv) require updating such documentation of the age of occupants at least every two years.

Section 1.4 Board of Trustees Vacancies. In case of any vacancy in the Board of Trustees, the remaining members thereof may elect a successor to hold office until the next meeting of the Home Owners Association.

Section 1.5 Officers. The Board of Trustees must appoint or elect from among its membership a chair, a vice chair, secretary, and a treasurer, who shall hold office at the pleasure of the Board of Trustees. The chair of the Board of Trustees, or in the chair's absence, the vice chair, presides at all meetings of the Board of Trustees and at all Home Owners Association meetings. The secretary takes and keeps minutes of all meetings. The Secretary will perform such other services as the Board of Trustees may impose. The treasurer has the custody and control of the funds of the Board of Trustees, subject to the action of the Board of Trustees, and shall, when requested by the chair to do so, report the state of finances of the Board of Trustees at each annual Home Owners Association meeting and at any Board of Trustees meeting. The treasurer may perform such other services as the Board of Trustees may require.

Section 1.6 Regular Meetings. A regular meeting of the Board of Trustees must be held immediately after the adjournment of each annual Home Owners Association meeting at the place at which such Home Owners Association meeting was held. Regular meetings, other than the annual meeting, will be held at regular intervals and at such places and at such times as the Board of Trustees may from time to time by resolution designate. Notice must be given of regular meetings of the Board of Trustees as provided in Section 3.1 of these By-Laws.

Section 1.7 Special Meetings. Special meetings of the Board of Trustees may be held whenever called by the chair, vice-chair, or by a majority of the Board of Trustees. Written notice of such special meeting must be given not less than 24 hours in advance of the meeting; provided, however, that by unanimous consent of the Board of Trustees, special meetings may be held without call or notice of any time or place.

Section 1.8 Quorum. A quorum for the transaction of business at any meeting of the Board of Trustees consists of the majority of the Board of Trustees then in office.

Section 1.9 Special Committees. The Board of Trustees, by resolution, may designate one or more special committees, each special committee to consist of two (2) or more of the Home Owners, which exercise the powers in such resolution set forth. Such special committee(s) shall have such name or names as may be determined from time to time by the Board of Trustees. Such special committees must keep regular minutes of their proceedings and report the same to the Board of Trustees when required. The chair of the Board of Trustees may appoint persons to fill vacancies on each of said special committees occasioned by death, resignation, removal or inability to act for any extended period of time.

Section 1.10 Additional Facilities. The Board of Trustees has 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 interest of the members, for conducting the business of the Board of Trustees.

ARTICLE II – MEETING OF HOME OWNERS ASSOCIATION

Section 2.1 Annual Meeting. The annual meeting of the Home Owners Association shall be held at 7:00 o'clock p.m. on the third Thursday of January each year, at such place as stated in the notice of meeting or in a duly executed waiver of notice; provided, however, that whenever such date falls upon a legal holiday, the meeting shall be held on the next succeeding business day, and provided, further, that the Board of Trustees may, by resolution, fix the date of the annual meeting at such other date as it shall deem appropriate. At such meeting the Home Owners shall elect members of the Board of Trustees for two (2) year terms, which terms commence as of February 1; provided, however, that at the first election two (2) of the five Board of Trustees members will be elected for terms of not more than one (1) year, which terms commence upon election and expire on the next February 1 after such election, and three (3) of the Board of Trustees members will be elected for not more than two (2) years, which terms commence upon election and expire on the second February 1 after such election; provided, further, that the term of any duly elected appointed Board of Trustees member does not expire until his or her successor is elected and qualifies.

Section 2.2 Voting. At any meeting of the Home Owners Association, each Home Owner is entitled to cast one vote for each Lot owned. However, as provided in Subsection 3.28(d) of the Declaration, the Declarant will have three votes for each Lot as long as Declarant owns two or more Lots in the PUD.

(a) Voting by Agents. Any Home Owner may attend and vote at such meeting in person, or by an agent duly appointed by an instrument in writing signed by the Home Owner and filed with the Board of Trustees or the Manager. Any designation of an agent to act for a Home Owner may be revoked at any time by written notice to the Board of Trustees or Manager, and shall be deemed revoked when the Board of Trustees or the Manager shall receive actual notice of the death or judicially declared incompetence of such Owner or of the conveyance of such Owner of his or her Lot. Where there is more than one record Owner, any or all of such persons may attend any meeting of the Home Owners Association, but it shall be necessary for those present to act unanimously in order to

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cast the votes to which they are entitled. Any designation of an agent to act for such persons must be signed by all such persons. Declarant shall be entitled to vote with respect to any Lot(s) owned by Declarant.

(b) Voting by Mortgagee. If a notice of default is recorded by any mortgagee who holds a mortgage which is a first lien on a Lot against the Owner of the Lot covered by the mortgage, then until the default is cured, the right of the Owner of such Lot to vote shall be transferred to the mortgagee recording the notice of default. Mortgagee shall mean any creditor that holds a first note, a Trust Deed or a Uniform Real Estate Contract on the Lot.

Section 2.3 Meeting. The presence at any Home Owners Association meeting having a majority of the total votes constitutes a quorum. If a quorum is not present at any meeting, the Owners present, though less than a quorum, may adjourn the meeting to a later date and give notice thereof to all the Owners in accordance with the provisions of Section 4 of these By-Laws, and at that meeting the presence of Owners holding in excess of thirty percent (30%) of the total votes shall constitute a quorum for the transaction of business; but in the event a quorum is not present at that meeting, the Owners present though less than a quorum, may give notice to all the Owners in accordance with Section 3.2 of these By-Laws of an adjourned meeting, and at that meeting whatever owners are present shall constitute a quorum. Unless otherwise expressly provided in this Declaration, any action may be taken at any meeting of the Owners upon the affirmative vote of a majority of the voting power of the Owners present and voting provided that a quorum is present as provided for above.

Section 2.4 Special Meeting. Special meetings of the Owners may be called at any time for the purpose of considering matters which, by the terms of the Declaration, require the approval of all or some of the Owners, or for any other reasonable purpose.

Section 2.5 Calls and Notices of Meetings. The calls and notices of all meetings of the Home Owners must conform to the provisions of Article III of these By-laws.

Section 2.6 Waiver of Irregularities. All inaccuracies and/or irregularities in calls, notices of meeting and in the matter of voting, and method of ascertaining those present, are deemed waived if no objection is made at the meeting.

ARTICLE III - CALLS AND NOTICES OF MEETINGS

Section 3.1 Annual Meeting of Home Owners. At least five (5) days, inclusive of the date of meeting, before the date of any annual meeting of the Home Owners, the secretary must cause a written notice setting forth the time and place to be delivered personally or deposited in the mail, with postage prepaid, addressed to each Home Owner at his last post office address as it then appears on the records of the Board of Trustees.

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Section 3.2 Special Meetings of Home Owners. Special meetings of the Home Owners may be called by the Board of Trustees, or by one-third (1/3) in number of the Home Owners. Special meetings shall be called by:

i) Written notice, signed by a majority of the Board of Trustees, and notice of such meeting shall be delivered to each Home Owner in writing at least 48 hours before the time fixed for the meeting; or

ii) Written notice, signed by Owners having one-third (1/3) of the total votes in the Association and delivered to each Home Owner not less than five (5) days before the date fixed for such special meeting.

(a) **Notice.** All notices provided under this Section 3.2 must advise each Home Owner as to the time, place and general purpose of the meeting and must be delivered personally, or mailed, postage prepaid, to each Home Owner at the Owner's last post office address as it appears on the books of the Board of Trustees.

(b) **Meetings Without Notice.** Whenever all of the members of the Association meet in person, such meeting shall be valid for all purposes without call or notice, or waiver of call or notice. No call or notice of any meeting of members shall be necessary if waiver of call and notice is signed by all of the members of the Association who are present.

ARTICLE IV – ADMINISTRATIVE RULES AND REGULATIONS

The Board of Trustees has the power to adopt and establish by resolution such building, management, and operational rules as the Board of Trustees may deem necessary for the maintenance, operation, management and control of the PUD, and the Board of Trustees may, from time to time by resolution, alter, amend and repeal such rules. When a copy of the rules has been furnished to the Owners, they shall be taken to be a part of these By-Laws. Home Owners must at all times obey such rules and see that they are faithfully observed by those persons over whom they have or may exercise control and supervision, it being understood that such rules shall apply and be binding upon all Home Owners and/or occupants of the PUD. Rules and regulations may be altered or amended or abolished at a meeting of Home Owners properly called and properly voted.

ARTICLE V – PAYMENT OF EXPENSES

Section 5.1 Assessments. Each Home Owner must pay the Association the Owner's pro-rata portion of the cash requirements deemed necessary by the Board of Trustees to manage and operate the Sunsetparks P.U.D. upon the terms, at the times, and in the manner provided in these By-Laws or in the Declaration without any deduction on account of any setoff or claim which the Owner may have against the Board of Trustees, and if the Owner fails to pay any installment within one (1) month from the time when the same becomes due, the Owner must pay interest thereon at the rate of twelve percent (12%) per annum from the date when such installment becomes due to the date of the payment thereof.

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(a) Cash Requirements. The cash requirements above referred to for each year, or portion of the year, are hereby defined, and are deemed to be such aggregate such as the Board of Trustees from time to time determines, in its judgment, is to be paid by all the Home Owners of Sunsetparks P.U.D. then in existence to enable the Board of Trustees to pay all estimated expenses and outlays of the Board of Trustees to the close of each year, growing out of or connected with the maintenance and operation of such land, buildings, and improvements, which sum may include, among other things, the cost of management, special assessments, fire, casualty, and public liability insurance premiums, common lighting and heating, landscaping and care of grounds, repairs and renovations to common areas and facilities, garbage collections, wages, water charges, sewer fees, legal and accounting fees, management fees, expenses and liabilities incurred by the Board of Trustees under or by reason of the Declaration and these By-laws, the payment of any deficit remaining from a previous period, the creation of a reasonable contingency or other reserve or surplus fund, as well as all other costs and expenses relating to Sunsetparks P.U.D.. The Board of Trustees may, from time to time, up to the close of the year for which such cash requirements have been so fixed or determined, increase or diminish the amount previously fixed or determined for such year. The Board of Trustees may include, in the cash requirements for any year, any liabilities or items of expense which accrued or became payable in a previous year, or which might have been included in the case requirements for a previous year, but were not included therein; and also any sums which the Board of Trustees may deem necessary or prudent to provide a reserve against liabilities or expenses then accrued or which thereafter accrue although not payable in that year.

(b) Assessments to Home Owners. The pro-rata portion payable by the Home Owner in and for each year or portion of year must be a sum within the limits and on the conditions hereinabove provided bearing to the aggregate amount of such cash requirements for such year, or portion of year, determined as aforesaid, the ratio of the Owner's Lot to the total of all Lots, and such assessments, together with any additional sums accruing under the Declaration and these By-laws are payable yearly in advance, or in such payments and installments as required by the Board of Trustees, and at such times as provided by the Board of Trustees.

(c) Discretionary Power. The Board of Trustees has discretionary powers to prescribe the manner of maintaining and operating Sunsetparks P.U.D. and to determine the cash requirements of the Board of Trustees to be paid as described above by the Home Owners under the Declaration and these By-laws. Every such reasonable determination by the Board of Trustees, within the bounds of the Declaration, and these By-laws, shall, as against the Owner, be deemed necessary and properly made for such purpose.

(d) First Mortgagee Rights. First mortgagees of all Lots have the right to examine the books and records of the Home Owners Association.

(e) Default after Leasing. If a Home Owner at any time lets or sublets the Lot, and default for a period of one (1) month in the payment of any assessments, the Board of Trustees may, at its option and so long as such default continues, demand and receive from any tenant or subtenant of the Owner occupying the Lot the rent due or becoming due from such tenant or subtenant to the Owner up to an amount sufficient to pay all sums due from the Owner to the Board of Trustees, and any such payments of such rent to the Board of Trustees is sufficient payment and discharge of such tenant or

sub-tenant as between such tenant or subtenant and the Owner to the extent of the amount so paid. At least five (5) days before demanding payment from a tenant or subtenant of a Lot under this Subsection 1(e), the Board of Trustees must provide written notice to the Lot Owner, at the address on record with the Board of Trustees, of its intent to make such a demand upon the tenant or subtenant.

Section 5.2 No Waiver. The omission of the Board of Trustees, before the expiration of any year, to timely fix the management assessments hereunder for that or the next year, shall not be deemed a waiver or modification in any respect of the covenants, conditions, or restrictions of the Declaration and these By-laws, or a release of the owner from the obligation to pay the assessments, or any installment thereof for that or any subsequent year. The assessment fixed for the preceding year shall continue until a new assessment is fixed.

ARTICLE VI – RIGHT OF ENTRY

Section 6.1 By the Board of Trustees. The Board of Trustees and its duly authorized agents have the right to enter any and all of the Lots in the PUD in case of an emergency originating in or threatening such Lot or any other part of the PUD, whether the Owner or occupant thereof is present at the time or not. The Board of Trustees and its duly authorized agents also have the right to enter any and all of the Lots at all reasonable times as required for the purpose of making necessary repairs upon the Common Areas and facilities of the PUD.

Section 6.2 By Home Owner. All Home Owners and their duly authorized agents and representatives have the right to enter any of the Lots contained within the PUD for the purpose of performing emergency installations, alterations, or repairs to the mechanical or electrical devices or installations located therein or thereon; provided, however, such emergency installations, alterations, or repairs are necessary to prevent damage or threatened damage to other Lots in the PUD; and provided, further, that the Home Owner affected by such entry must first be notified thereof if available and if time permits.

ARTICLE VII – REIMBURSEMENT FOR DAMAGES

Each Home Owner must promptly perform or cause to be performed all maintenance and repair work within any of said Lots owned by him which, if omitted, will adversely affect the building in which said Lot is located in its entirety, or any part of the PUD, and is liable in damages for any failure on his part to do so. Each member must also reimburse the Board of Trustees for the full value of any repairs or replacements to the Common Areas and facilities made necessary through the negligence or fault, as established by the procedure set out in Article III, Section 9 of the Declaration, of such Home Owner or such Home Owner's tenants.

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ARTICLE VIII – AMENDMENTS

These By-Laws may only be altered, amended, or repealed in accordance with Section 3.29 of the Declaration and by the affirmative vote of sixty-seven percent (67%) of the Percentage Interest of the Home Owners in person or represented by proxy at any regular meeting of such Home Owners, or at any special meeting if notice of the proposed alteration or repeal be contained in the notice of such special meeting.

SUNSETPARKS, Inc.

by:



Randy Gnehm

Its: President

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EXHIBIT "C" - Plat

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COUNTY RECORDER'S AND CITY ENGINEER'S APPROVAL

APPROVAL AS TO FORM

PLANNING COMMISSION CHAIRMAN APPROVAL AND ACCEPTANCE

MAYOR'S APPROVAL AND ACCEPTANCE

CITY CLERK'S CERTIFICATE

CITY LANDMARK

SUNSET PARKS P.U.D.
PART OF THE NE 1/4 OF SEC. 20, T19N, R06E, S14W
HINLEY CITY, CACHE COUNTY, UTAH
FEBRUARY 18, 2008

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BOUNDARY DESCRIPTION

NARRATIVE

OWNER'S DECLARATION

ACKNOWLEDGMENT
