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DECLARATION OF COVENANTS,
CONDITIONS, EASEMENTS AND RESTRICTIONS
FOR SUNCREST, A PLANNED COMMUNITY

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**DECLARATION OF COVENANTS,
CONDITIONS, EASEMENTS AND RESTRICTIONS
FOR SUNCREST, A PLANNED COMMUNITY**

THIS DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR SUNCREST, A PLANNED COMMUNITY, is dated December 21, 1999. It is made by DAE/WESTBROOK, L.L.C. a Delaware limited liability company.

RECITALS:

- A. Capitalized terms in this Declaration are defined in Article I.
- B. Declarant holds legal title or has the option to purchase certain real property which consists of approximately three thousand six hundred and seventy-eight (3,678) acres of land located in Salt Lake County, Utah, and Utah County, Utah.
- C. Declarant desires to develop, in stages, the aforesaid lands into a planned community consisting of residential, office, commercial, recreational and other areas and uses.
- D. At full development it is intended, without obligation, that said community will collectively have several residential neighborhoods, office parks, recreational areas which may include, without obligation, tennis courts, swimming pool and clubhouse, open spaces, walkways, a trail system, drives and other social, commercial, civic and cultural buildings and facilities.
- E. As part of the various stages of development of the aforesaid lands, Declarant intends, without obligation, to record various Plats; to dedicate portions of SunCrest to the public for streets, roadways, drainage, flood control, parks and general public use; and to record various Neighborhood Declarations and Supplemental Declarations covering portions of SunCrest, which Neighborhood Declarations and/or Supplemental Declarations will designate the purposes for which such portions of SunCrest may be used and may set forth additional covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements applicable to such portions of SunCrest.
- F. Declarant intends, without obligation, to annex the Additional Land into the SunCrest planned community, which land is not presently included in the SunCrest planned community.
- G. As part of the development of the aforesaid lands, Declarant intends, without obligation, to sell various parcels included in SunCrest to various Merchant Builders and to record Neighborhood Declarations and/or Supplemental Declarations containing restrictive covenants on the parcels sold, and those Merchant Builders with the Declarant's approval, may record Plats and make public dedications on the parcels purchased.

H. Declarant desires to form the Master Association as a non-profit corporation for the purpose of benefitting SunCrest and its Owners and Residents which non-profit corporation will (1) acquire, construct, operate, manage and maintain a variety of Community Areas and other areas within SunCrest; (2) establish, levy, collect and disburse the Assessments and other charges imposed hereunder; and (3) as the agent and representative of the Members of the Master Association and Residents of SunCrest, administer and enforce all provisions hereof and enforce use and other restrictions imposed on various parts of SunCrest.

I. Declarant is preparing the necessary documents for the incorporation and organization of the Master Association and may, without obligation, seek approval thereof by FNMA, FHLMC, FHA, VA and by any other governmental agencies or financial institutions whose approval Declarant deems necessary or desirable.

J. Declarant desires to establish for its own benefit and for the mutual benefit of all future Owners, Mortgagees, Residents, occupants or other holders of an interest in SunCrest, or any part thereof, certain easements and rights and certain mutually beneficial covenants, restrictions and obligations with respect to the proper development, use and maintenance of the various parcels and neighborhoods within the SunCrest planned community.

K. Declarant desires and intends that the Owners, Mortgagees, lessees and trustees under trust instruments or deeds, occupants, Residents and other persons hereafter acquiring any interest in or otherwise utilizing property at SunCrest, shall at all times enjoy the benefits of, and shall hold their interest subject to the rights, easements, privileges, covenants and restrictions hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the aesthetic and cooperative aspects of the SunCrest planned community and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the SunCrest planned community.

L. Declarant therefore wishes to subject all of SunCrest to the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements hereinafter set forth.

M. In order to cause the Covenants to run with SunCrest and to be binding upon SunCrest and the Owners thereof from and after the date this Declaration is Recorded, Declarant hereby makes all conveyances of SunCrest, whether or not so provided therein, subject to the Covenants herein set forth; and by accepting deeds, leases, easements or other grants or conveyances to any portion of SunCrest, the Owners and other transferees for themselves and their heirs, executors, administrators, trustees, personal representatives, successors and assigns, agree that they shall be personally bound by all of the Covenants (including but not limited to the obligation to pay Assessments) hereinafter set forth except to the extent such persons are specifically excepted herefrom.

NOW, THEREFORE, DECLARANT hereby declares, covenants and agrees as follows:

ARTICLE I

DEFINITIONS

The following words, phrases or terms used in this Declaration (including that portion hereof headed "Recitals") shall have the following meanings:

1.1 "Additional Land" shall mean, refer to, and consist of the following described parcels of real property situated in Salt Lake County, Utah, and Utah County, Utah and described in Exhibit B to this Declaration which is attached hereto and incorporated herein by this reference. In addition, the Additional Land shall also consist of any other real property located not more than two miles from the exterior boundaries of the property described in Exhibit A or Exhibit B. A description of the Additional Land is set forth in this Declaration solely for purposes of identification. This Declaration is not intended as and should not be deemed to constitute any lien, encumbrance, restriction, or limitation upon any portion of the Additional Land unless and until such portion is added to the existing SunCrest project in accordance with the provisions of Article XVI of this Declaration.

1.2 "Annual Assessment" shall mean the charge levied and assessed each year against each Lot, Parcel and the Owner thereof pursuant to Section 7.2, hereof.

1.3 "Apartment Development and/or Apartment Development Use" shall mean a Parcel or portion thereof which is dedicated for such purpose in a Neighborhood Declaration, Supplemental Declaration or in the Master Land Use Plan, and is comprised of Rental Apartments and surrounding areas which are intended, as shown by the site plan therefor approved by the Municipal Authority and the Design Review Board or otherwise, as one integrated apartment operation under the same ownership.

1.4 "Articles" shall mean the Articles of Incorporation of the Master Association as the same may from time to time be amended or supplemented.

1.5 "Assessable Property" shall mean any Lot or Parcel, except such part or parts thereof as may from time to time constitute Exempt Property.

1.6 "Assessment" shall mean an Annual Assessment, Special Assessment and/or Maintenance Charge imposed by the Master Association.

1.7 "Assessment Lien" shall mean the lien created and imposed by Article VII;

1.8 "Assessment Period" shall mean the term set forth in Section 7.6.

1.9 "Board" shall mean the Board of Trustees of the Master Association.

1.10 "Bylaws" shall mean the Bylaws of the Master Association as the same may from time to time be amended or supplemented.

1.11 "Church Use" shall mean use of property at SunCrest by a church or religious organization for a permanent church facility including a chapel used for religious services and which may be used for church cultural and recreational activities. Residential Areas and Commercial Areas may not be utilized for Church Use, except as permitted by a Neighborhood Declaration, Supplemental Declaration or the Declarant. No Dwelling Unit may be utilized for Church Use.

1.12 "Cluster Residential Development and/or Cluster Residential Use" shall mean Lots in planned unit developments or subdivisions with Dwelling Units intended for Single Family occupancy and may include those types of residential housing arrangements known as townhouses, clustered housing, duplexes, zero-lot line housing and similar arrangements, together with related areas intended for the use and enjoyment of the Owners and Residents of the Lots in the cluster development.

1.13 "Commercial or Commercial Area(s)" shall mean any Parcel or portion thereof owned or leased by one Person or a group of Persons, which is used for one or more commercial purposes, including, but not limited to the following: Apartment Development, Shopping Center Development, General Commercial Development, Office/Industrial Development, Resort, Hotel or Motel Development or at the option of Declarant, Timeshare Development, and other areas used for commercial or other non-Residential purposes. Commercial Areas shall not include any Community Areas owned by the Master Association or other Community Areas owned by a Neighborhood Association or owned in common by Residential Condominium Unit Owners. At such time as an Apartment Development is converted to a Residential Condominium Development, the property shall cease to be a Commercial Area and shall thereafter be a Residential Area.

1.14 "Commercial Condominium Development and/or Commercial Condominium Development Use" shall mean a Condominium Development intended for commercial use.

1.15 "Community Area" and "Community Areas" shall mean (a) all Master Association Land including (i) the Village Green Park as identified on the Master Land Use Plan which is utilized as the SunCrest entrance area excluding the Welcome Center Building, land and adjacent parking and (ii) entry monument areas including the entry monuments related to projects subject to Neighborhood Declarations and/or Supplemental Declarations constructed by developers or Merchant Builders; (b) all areas identified as open space on the Master Land Use Plan, including the Trail System, which may or may not be dedicated to the public or to a Municipal Authority, but only until such open space is dedicated to a Municipal Authority; (c) all land within SunCrest which the Declarant, by this Declaration or other recorded instrument, makes available for use by Members of the Master Association including enhanced parkways and median strips and areas between roadways and lots even if owned by a Municipal Authority; (d) all land within SunCrest which the Declarant indicates on a Plat, Neighborhood Declaration or Supplemental Declaration is to be used for landscaping, drainage, and/or flood control for the benefit of SunCrest and/or the general public and is to be dedicated to the public or a Municipal Authority upon the expiration of a fixed period of time, but only until such land is so dedicated; (e) all land or right-of-way easements within SunCrest which are dedicated to the public or to a Municipal Authority, but which such Municipal Authority or other governmental agency requires the Master Association to maintain; (f) areas on a Lot or Parcel within easements granted to the Master Association or its Members for the location,

construction, maintenance, repair and replacement of a wall, which easement may be granted or created on a Plat or Neighborhood Declaration or Supplemental Declaration or by a Deed or other conveyance accepted by the Master Association.

1.16 "Community Expense Fund" shall mean and refer to the fund created or to be created pursuant to the provisions of Article VII of this Declaration and into which all monies of the Master Association shall be deposited. Two separate and distinct funds shall be created and maintained thereunder, one for operating expenses and one for capital or reserve expenses which together shall constitute the Community Expense Fund.

1.17 "Community Expenses" shall mean and refer to those costs and expenses arising out of or connected with the maintenance and operation of SunCrest and the Master Association as described in Article VII hereof and which determine the Assessments made to Owners.

1.18 "Condominium Development" shall mean a condominium ownership regime established under the laws of the State of Utah including both Residential and Commercial Condominium Developments.

1.19 "Condominium Unit" shall mean a condominium unit (as defined under Utah Code Ann. § 57-8-1 et seq.), including its appurtenant interest in all Community Areas, established under Utah law. Such term shall not include a Rental Apartment in an Apartment Development.

1.20 "Covenants" shall mean the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements set forth herein.

1.21 "Declarant" shall mean DAE/WESTBROOK, L.L.C., a Delaware limited liability company and the successors and assigns of Declarant's rights and powers hereunder.

1.22 "Declaration" shall mean this DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR SUNCREST, A PLANNED COMMUNITY, as amended or supplemented from time to time.

1.23 "Deed" shall mean a deed or other instrument conveying the fee simple title in a "Lot" or "Parcel".

1.24 "Design Guidelines" means those design guidelines for development of all the real property subject to this Declaration as established by the Declarant and/or the Design Review Board from time to time. Declarant or the Design Review Board reserves the right to modify the Design Guidelines. The Design Guidelines shall impose certain restrictions with respect to a Dwelling Unit's mandatory minimum and maximum square footage. The Design Guidelines also include certain signage guidelines for development of all the real property subject to this Declaration as established by the Declarant and/or the Design Review Board from time to time. There is no assurance that such Design Guidelines will not change from time to time and they may change with respect to unsold Parcels or Lots, subject to this Declaration, after one or more other such Parcels or Lots have been sold by Declarant.

1.25 "Design Review Board" shall mean the committee created pursuant to Article XI.

1.26 "Development Guidelines" shall mean those development guidelines for SunCrest which relate to the development and construction of roadways, major infrastructure and other matters related to both off-site and on-site development of Parcels and Lots, but excluding the guidelines for construction of Dwelling Units and buildings on Lots and Parcels which are governed and controlled by the Design Guidelines. The Development Guidelines are an exhibit to the Master Development Agreement between Declarant and Draper City.

1.27 "Dwelling Unit" shall mean any building or portion of a building situated upon a Lot or Parcel designed and intended for use and occupancy as a residence by a Single Family.

1.28 "Eligible Mortgagee" shall mean and refer to a Mortgagee which has requested notice of certain matters from the Master Association in accordance with Section 17.1 of this Declaration.

1.29 "Exempt Property" shall mean the following parts of SunCrest:

1.29.1 All land and Improvements owned by or dedicated to and accepted by the United States, a Municipal Authority, or any political subdivision thereof, for as long as any such entity or political subdivision is the owner thereof or for so long as said dedication remains effective including all Municipal Authority Property and all property utilized for General Public Uses;

1.29.2 All Master Association Land, for as long as the Master Association is the owner thereof;

1.29.3 All land utilized for Church Use.

1.29.4 Each other property, including each Lot or Parcel, while owned by Declarant or a Declarant related developer entity, until the earliest to occur of (i) the acquisition of its record title by a Merchant Builder or other Person, other than Declarant or a Declarant related developer entity, (ii) the 60th day after the Municipal Authority having jurisdiction thereover issues a certificate of occupancy for the first Dwelling Unit or building hereafter constructed thereon, or (iii) the 10th anniversary of the date on which the real property comprising such Exempt Property is subjected to this Declaration. Declarant or a Declarant related developer entity may expressly waive its right to an exemption from Assessments as to some or all Exempt Properties of which it is then the Owner, by a Supplemental Declaration identifying such Exempt Properties and signed by it and all Mortgagees of such Exempt Properties. In such event, such exemption shall terminate as to each such identified Exempt Property when such Supplemental Declaration is Recorded. Any such waiver shall run with the title to each such Exempt Property and bind its subsequent Owners, including Declarant or any Declarant related developer entity.

1.29.5 All Exempt Property described herein shall be exempt from Assessments and Membership in the Master Association (provided, however, the Declarant or a Declarant

related entity shall remain a Member in the Master Association at all times as a Class B Member with voting rights, notwithstanding its temporary exemption status from required Assessment payments) and its associated privileges and responsibilities, but shall nevertheless be subject to all other provisions of this Declaration, including but not limited to, the use restrictions and architectural controls. Provided, however, at the sole and exclusive option of Declarant, property described in Section 1.29.1 shall be fully exempt from all of the terms and provisions of this Declaration.

1.30 "FHA" shall mean and refer to the Federal Housing Administration.

1.31 "FHLMC" shall mean the Federal Home Loan Mortgage Corporation.

1.32 "First Mortgage" means any Mortgage which is not subject to any lien or encumbrance except liens for taxes or other liens which are given priority by statute.

1.33 "First Mortgagee" means any person named as a Mortgagee under a First Mortgage, or any successor to the interest of any such person under a First Mortgage.

1.34 "FNMA" shall mean and refer to Federal National Mortgage Association.

1.35 "General Commercial Development or General Commercial Use" shall mean those types of developments and uses in a Commercial Area designated by the Design Guidelines and/or Master Land Use Plan as General Commercial, including but not limited to Commercial Condominium Developments, Shopping Center Use, Office/Industrial Use, Resort, Hotel and Motel Use or any other development denominated as General Commercial Use by Declarant, including Timeshare Use.

1.36 "General Public Uses" shall mean those types of uses designated by the Master Land Use Plan as General Public Uses including but not limited to school sites and parks conveyed, assigned, or transferred by Deed or other written instrument to a Municipal Authority.

1.37 "Governing Documents" shall mean this Declaration and such recorded amendments, Neighborhood Declaration(s), Supplemental Declaration(s), the Bylaws, the Articles, the SunCrest Rules, the Design Guidelines, the Development Guidelines and the Board's resolutions.

1.38 "Improvement(s)" shall mean any improvement now or hereafter constructed in SunCrest and includes anything which is a structure for purposes of applicable Municipal Authority law including but not limited to any building, structure, shed, covered patio, fountain, pool, radio or television antenna or receiving dish, tree, shrubbery, paving, curbing, landscaping, tank, fence, mailbox, sign, newspaper vending and distribution machines, overnight delivery service drop boxes, any excavation or fill having a volume exceeding ten (10) cubic yards and any excavation, fill, ditch, diversion, dam, or other thing or device which affects the natural flow of surface water or the flow of water in a natural or artificial stream, wash or drainage channel.

1.39 "Land Use Classification" shall mean the classification to be established by the Declarant pursuant to Section 4.1, which designates the type of Improvements which may be constructed on a Lot, Parcel or Master Association Land and the purposes for which such Improvements and surrounding land may be utilized.

1.40 "Lease" shall mean a written lease or sublease for the leasing or rental of an Apartment or other Residential or Commercial property.

1.41 "Lot" shall mean (a) any area of real property within SunCrest designated as a Lot on any Plat recorded or approved by Declarant and limited by a Neighborhood Declaration and/or Supplemental Declaration to either Single Family Residential Use or Cluster Residential Use and (b) any Condominium Unit within SunCrest which is limited to Single Family Residential Use by a Neighborhood Declaration and/or Supplemental Declaration.

1.42 "Maintenance Charges" shall mean any and all costs assessed pursuant to Sections 10.2 and 10.3.

1.43 "Manager" shall mean such person or entity retained by the Board of Trustees to perform certain functions of the Board pursuant to this Declaration or the Bylaws. The Manager for the Master Association shall carry out certain responsibilities of the Master Association as required herein and by the Master Development Agreements.

1.44 "Master Association" shall mean the Utah nonprofit corporation to be organized by Declarant to administer and enforce the Covenants and to exercise the rights, powers and duties set forth in this Declaration, its successors and assigns. Declarant hereby reserves the exclusive right to cause such Master Association to be incorporated and intends to name the Master Association the "SUNCREST OWNERS ASSOCIATION, INC."

1.45 "Master Association Land" shall mean such part or parts of SunCrest, together with the buildings, structures and Improvements thereon, and other real property which the Master Association now or hereafter owns in fee for as long as the Master Association is the owner of the fee.

1.46 "Master Association Use" shall mean those portions of SunCrest intended for the use and benefit of the Master Association.

1.47 "Master Development Agreement(s)" shall mean (a) that certain Master Development Agreement for the SunCrest Master Planned Community - A Planned Unit Development dated August 24, 1999, entered into by and between Declarant and Draper City and (b) any other development agreement entered into between Declarant and any Municipal Authority with respect to development of SunCrest. Any land conveyed, assigned, or transferred by Deed or other written instrument to any Municipal Authority under any Master Development Agreement shall be Exempt Property and subject to the Design Guidelines, and the design review process conducted by the Design Review Board pursuant to Article XI.

1.48 "Master Land Use Plan" shall mean the map, site plan and other documents showing and/or identifying the various SunCrest Land Use Classifications and density allocations applicable to various Parcels as approved by the applicable Municipal Authority and the Declarant, as the same may from time to time be amended, a copy of which shall be on file at all times in the office of the Master Association. Declarant reserves the right to modify the Master Land Use Plan from time to time. Such modifications may include, among others, the addition or deletion of Land Use Classifications.

1.49 "Member" shall mean any person holding a Membership in the Master Association pursuant to this Declaration.

1.50 "Membership" shall mean a Membership in the Master Association and the rights granted to the Owners and Declarant pursuant to Article VI to participate in the Master Association.

1.51 "Merchant Builder" shall mean a Person who acquires a Parcel or a group of five or more Lots in SunCrest for the purpose of improving and constructing Dwelling Units or other Improvements thereon for resale to the general public or other development purposes; provided, however, that the term "Merchant Builder" shall not mean or refer to Declarant or its successors.

1.52 "Mortgage" shall mean any mortgage, deed of trust, or other document pledging any portion of a Lot or Parcel or interest therein as security for the payment of a debt or obligation.

1.53 "Mortgagee" shall mean a beneficiary of a Mortgage as well as a named Mortgagee.

1.54 "Municipal Authority" shall mean the applicable governmental entity or municipality which has jurisdiction over some part of SunCrest including without limitation, Salt Lake County, Utah, and Utah County, Utah, and Draper City, Utah.

1.55 "Municipal Authority Property" shall mean all real property which is from time to time conveyed, assigned, or transferred by Deed or other written instrument to the applicable Municipal Authority, including but not limited to community parks, mini parks, portions or all of the Trail System, public streets including medians and enhanced parkways, retention basins and drainage facilities and open space areas.

1.56 "Neighborhood" shall mean two or more Lots or Parcels which share interests other than those common to all Lots or Parcels, as more particularly described in Section 6.6. By way of illustration and not limitation, a Single Family Residential Development, a Cluster Residential Development, a Residential Condominium Development or a Commercial Area might each be designated as separate Neighborhoods, or a Neighborhood may be comprised of more than one housing or use type with other features in common. In addition, each Parcel intended for development shall constitute a Neighborhood, subject to division by Declarant into more than one Neighborhood upon development. Where the context permits or requires, the term "Neighborhood" shall also refer to the Sub-Association which in some instances may be established to act on behalf of the Owners within the Neighborhood. Neighborhood boundaries may be established and modified as provided herein.

1.57 "Neighborhood Declaration" shall mean a declaration recorded pursuant to Section 4.1 of this Declaration. A Neighborhood Declaration shall contain restrictions on use and establish a Land Use Classification for each Parcel covered by the Neighborhood Declaration as described in Section 4.1 of this Declaration. The Neighborhood Declaration shall identify the density allocated to the property it covers. It is contemplated that a Neighborhood Declaration will be, in contrast to a Supplemental Declaration, a more comprehensive and detailed document such as a condominium declaration or restrictive covenants which more specifically regulate a Neighborhood.

1.58 "Neighboring Property" is any property or street within SunCrest (including annexed property) other than the specific property in reference.

1.59 "Office/Industrial Development and/or Office/Industrial Use" shall mean those types of developments and uses in a Commercial Area designated by the Design Guidelines and/or Master Land Use Plan as Office/Industrial.

1.60 "Owner" shall mean (a) any Person(s) who is (are) record holder(s) of legal, beneficial or equitable title to the fee simple interest of any Lot or Parcel including, without limitation, one who is buying a Lot or Parcel under a recorded contract or recorded notice of such contract, but excluding others who hold an interest therein merely as security and (b) any Person(s) entitled to occupy all of a Parcel or Lot under a lease or sublease for an initial term of at least ten (10) years in which case the fee owner or sublessor of the Parcel or Lot shall not be deemed the Owner thereof for purposes of this Declaration during the term of said lease or sublease.

1.61 "Parcel" shall mean an area of real property within SunCrest limited by a Neighborhood Declaration or Supplemental Declaration or the Master Land Use Plan to one of the following Land Use Classifications: Apartment Development, Residential Condominium Development (but only until the condominium regime therefor is recorded), Shopping Center Development, Commercial Condominium Development, General Commercial Development, Office/Industrial Development, Resort, Hotel and Motel Development, or Timeshare Development. The term Parcel shall also include those areas of land within SunCrest which a Neighborhood Declaration or Supplemental Declaration or the Master Land Use Plan designates for Single Family Residential Use or Cluster Residential Use but which have not yet been subdivided into Lots and related amenities and rights-of-way, but any such areas shall cease to be a Parcel upon the recordation of a Plat or other instrument covering the area and creating Lots and related amenities. A Parcel shall not include a Lot, any Exempt Property or any Master Association Land but, in the case of staged developments, shall include areas not yet included in a Plat, condominium property regime or other recorded instrument creating Lots and related amenities. A Parcel with a Land Use Classification of Apartment Development shall cease to be a Parcel if the Apartment Development is converted to a Residential Condominium Development. Declarant shall have the right, subject to the terms of the Master Development Agreements, to identify and create and/or reconfigure the boundaries of any Parcel of which Declarant is the Owner.

1.62 "Person" shall mean a natural individual, a corporation, limited liability company, partnership or any other entity with the legal right to hold title to real property.

1.63 "Plat" shall mean any subdivision plat or record of survey map affecting SunCrest filed in the office of the County Recorder of Salt Lake County, Utah, or Utah County, Utah, as such may be amended from time to time, including but not limited to any such Recorded plats or maps respecting all or any portion of the Additional Land.

1.64 "Recording" "Record" shall mean placing an instrument of public record in the office of the County Recorder of Salt Lake County, Utah, and/or Utah County, Utah, as applicable, and "Recorded" shall mean having been so placed of public record.

1.65 "Rental Apartments" shall mean Dwelling Units within a permanent Improvement consisting of four (4) or more commercially integrated Dwelling Units under single ownership upon one or more contiguous Parcels, each of which is designed and utilized, otherwise than as a hotel or on some other transient basis, for rental or leased for Residential purposes to non-Owners.

1.66 "Resident" shall mean:

1.66.1 Each buyer under a contract of sale covering any part of the Assessable Property, regardless of whether the contract is recorded, and each tenant or lessee actually residing or conducting a business on any part of the Assessable Property; and

1.66.2 Members of the immediate family of each Owner, lessee, tenant and of each buyer referred to in subparagraph (a) actually living in the same household with such Owner, lessee, tenant or buyer.

Subject to SunCrest Rules as the Master Association may hereafter specify (including the imposition of special non-resident fees for use of the Master Association Land if the Master Association shall so direct), the term "Resident" also shall include the on-site employees, guests or invitees of any such Owner, lessee, buyer or tenant, if and to the extent the Board in its absolute discretion by resolution so directs.

1.67 "Residential Condominium Development and/or Residential Condominium Development Use" shall mean a Condominium Development intended for Single Family Residential Use.

1.68 "Residential" or "Residential Areas" shall include Single Family Residential Developments, Cluster Residential Developments, Residential Condominium Developments, and at the option of Declarant, Timeshare Developments and all common recreational areas and facilities associated with any of the foregoing and other non-Commercial Areas.

1.69 "Resort, Hotel or Motel Development and/or Resort, Hotel or Motel Use" shall mean any area within SunCrest approved by Declarant and the applicable Municipal Authority for use as a Resort, Hotel or Motel Development.

1.70 "Shopping Center Development and/or Shopping Center Use" shall mean any area within SunCrest approved by Declarant and the applicable Municipal Authority for use as a Shopping Center.

1.71 "Single Family" shall mean a group of one or more persons, each related to the other by blood, marriage or legal adoption, or a group of persons not all so related, who maintain a common household in a Dwelling Unit.

1.72 "Single Family Residential Development and/or Single Family Residential Use" shall mean Lots in a planned unit development or subdivision intended for Single Family occupancy in Dwelling Units, together with related areas intended for the use and enjoyment of the Owners and Residents of such Lots.

1.73 "Special Assessment" shall mean any assessment levied and assessed pursuant to Section 7.4.

1.74 "Special Service Districts" shall mean one or more special service districts which may be established to provide SunCrest with, among other things, waste water treatment and disposal services, fire protection service, road maintenance, emergency services, special lighting facilities for nonstandard street lights, culinary water and facilities including pump stations, snow plowing and school bus stop shelters.

1.75 "Sub-Association" shall mean any Utah nonprofit corporation or unincorporated association, or its successor in interest, the membership of which is composed of the Owners of a Parcel or Lots subject to one or more Neighborhood Declarations and/or Supplemental Declarations. Subject to Declarant approval, any Merchant Builder or Neighborhood may, but shall not be required to, Record a Neighborhood Declaration against a Neighborhood development or may organize such Sub-Association under the conditions set forth in this Declaration.

1.76 "SunCrest" shall mean, refer to, and consist of the parcels of real property situated in Salt Lake County, Utah, and/or Utah County, Utah described in Exhibit A which is attached hereto and incorporated herein by this reference and the development to be completed thereon, together with any real property hereafter annexed pursuant to the provisions of this Declaration.

1.77 "SunCrest Rules" shall mean the rules for SunCrest adopted by the Board pursuant to Section 5.3.

1.78 "Supplemental Declaration" shall mean an amendment or supplement to this Declaration filed pursuant to Article XVI which subjects Additional Land to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described thereon, including but not limited to, designation of certain Lots or Parcels as Neighborhoods thereon. The term shall also refer to an instrument filed by the Declarant identified as a Supplemental Declaration and recorded pursuant to Section 4.1 of this Declaration which establishes a Land Use Classification, and may, pursuant to Section 6.6.3, designate Voting Groups. Neighborhood Declarations may or may not be Recorded in addition to or as a part of a

Supplemental Declaration in the Declarant's sole, exclusive, and subjective discretion, however, it is possible, but not required, that certain Lots or Parcels may be subject to both a Neighborhood Declaration and a Supplemental Declaration. It is contemplated that a Supplemental Declaration will be, in contrast to a Neighborhood Declaration, a relatively short document adding property to SunCrest, identifying Land Use Classifications, designating Neighborhoods and/or Voting Groups and identifying density allocated to the property it covers.

1.79 "Timeshare Development or Timeshare Use" shall mean any such development as defined under Utah Code Ann. § 57-19-2(16) or successor statutes. Notwithstanding anything to the contrary contained in this Declaration, Declarant may locate a Timeshare Development in Residential Areas or Commercial Areas.

1.80 "Trail System" shall mean the system of trails for SunCrest which is established from time to time by the Declarant and/or the Master Association and which may be identified on the Master Land Use Plan or on any Plat for SunCrest. The Trail System may be owned by the Master Association and/or conveyed, assigned, or transferred by Deed or other written instrument to the appropriate Municipal Authority.

1.81 "Use" shall mean one or more specific types of property development and classification as set forth in Section 4.1 of this Declaration.

1.82 "VA" shall mean the Veterans Administration.

1.83 "Village" shall mean the name or title referring to two or more Neighborhoods. A Village is not an independent legal organization, but is only a means of referring to two or more Neighborhoods for identification purposes.

1.84 "Visible From Neighboring Property" shall mean, with respect to any given object, that such object is or would be visible to a person six feet tall standing on Neighboring Property, on the level of the base of the object being viewed.

1.85 "Voting Group" shall mean one or more Neighborhoods whose Voting Members vote on a common slate for election of trustees to the Board, as more particularly described in Section 6.6.3 or, if the context so indicates, the group of Owners whose Lots or properties comprise such Neighborhoods.

1.86 "Voting Member" shall mean the representative(s) selected by the Members within each Neighborhood as provided in Section 6.6.3 to be responsible for casting votes attributable to Lots or other properties in the Neighborhood on matters requiring a vote of the Membership (except as otherwise specifically provided in this Declaration and in the Bylaws). The term "Voting Member" shall include alternate Voting Members acting in the absence of the Voting Member and any Owners authorized to personally cast the votes for their respective Lots or Parcels pursuant to Section 6.6.3

2.4 Special Service Districts. In connection with the development of SunCrest, it is contemplated that Special Service Districts will be formed in order to provide SunCrest with various services and facilities including but not limited to waste water treatment and disposal services, fire protection service, road maintenance, emergency services, special lighting facilities for non-standard street lights, culinary water and facilities including pumping stations, snowplowing and school bus stop shelters. Each Special Service District shall be a body politic and corporate and a quasi-municipal public corporation of the State of Utah. The Special Service Districts shall have the right and authority to levy taxes, charges and/or assessments upon owners of taxable property within the Special Service Districts. The Special Service Districts will have the power, among other things, to contract, to acquire and construct facilities and to finance the cost thereof by the issuance of bonds and to establish rates and charges that enable the Special Service Districts to operate such facilities as are necessary to fulfill its purposes. It is contemplated that all of SunCrest will be part of one or more Special Service Districts and each Owner and Resident will be subject to all charges levied by them.

ARTICLE III

EASEMENTS AND RIGHTS OF ENJOYMENT IN COMMUNITY AREAS

3.1 Easements of Enjoyment. Every Member shall have a right and easement of enjoyment in and to the Community Areas which shall be appurtenant to and shall pass with the title to every Lot and Parcel, subject to the following provisions:

3.1.1 The right of the Master Association to suspend the voting rights and right to the use of the Community Areas by any Member (i) for any period during which any Assessment against his Lot or Parcel remains delinquent; (ii) for a period not to exceed sixty (60) days for any infraction of this Declaration, a Neighborhood Declaration, a Supplemental Declaration, the SunCrest Rules or applicable Design Guidelines, and (iii) for successive sixty (60)-day periods if any such infraction is not corrected during any prior sixty (60)-day suspension period.

3.1.2 The right of the Master Association to dedicate or transfer all or any part of the Master Association Land to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Master Association.

3.1.3 The right of the Master Association to regulate the use of the Community Areas through the SunCrest Rules and to prohibit access to those Community Areas, such as landscaped rights-of-ways, not intended for use by the Members. The SunCrest Rules shall be intended, in the absolute discretion of the Board, to enhance the preservation of the Community Areas or the safety and convenience of the users thereof, or otherwise shall serve to promote the best interests of the Owners and Residents.

3.1.4 The right of the applicable Municipal Authority and any other governmental or quasi-governmental body having jurisdiction over the SunCrest to access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained

within SunCrest for purposes of providing police and fire protection, transporting school children and providing other governmental or municipal service.

3.2 Easements for Encroachments. If any part of a Dwelling Unit or Improvement built in substantial accord with the boundaries for such Dwelling Unit or Improvement as depicted on a Plat (or in other approved documents depicting the location of such on the Lot or Parcel) encroaches or shall encroach upon the Community Areas, or upon an adjoining Lot or Parcel, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of the Community Areas encroaches or shall encroach upon a Lot of a Dwelling Unit or Parcel of an Improvement, an easement for such encroachment and for the maintenance of the same shall and does exist. Each Owner shall have an unrestricted right of ingress or egress to and from its Lot or Parcel.

3.3 Easements for Swale Maintenance and Flood Water. Various Community Areas, Lots and Parcels have lengthy depressions in the surface of the soil, similar to a ditch, with sides that are gently sloped toward the center and covered with vegetation, and which are designed to carry water away from any Community Area, Lot or Parcel, as depicted upon a Recorded Plat, or otherwise found on such properties (a "Swale"). All Owners of Lots or Parcels wherein Swales are located shall (a) install, keep, maintain, and replace the Swale's surface in order to prevent flooding; (b) maintain, and repair any bulkhead, wall, dam, or other structure retaining water; and (c) remove trash and other debris therefrom and fulfill their maintenance responsibilities as provided in this Declaration. Notwithstanding the foregoing, the Declarant reserves for itself and its successors, assigns, and designees, a perpetual, nonexclusive right and easement, but not the obligation, to enter upon the Swales located within any Community Area, Lot or Parcel for the purpose of maintaining, repairing, cleaning, or altering drainage and water flow, and shall have an access easement over and across any Community Area, Lot or Parcel (but not the Dwelling Units or other buildings thereon) abutting or adjacent to any portion of any Swale to the extent reasonably necessary to exercise their rights under this Section 3.3. The Declarant's rights and easements provided in this Section 3.3 shall be transferred automatically to the Master Association at such time as the Declarant shall cease to own any property subject to the Declaration, or such earlier time as Declarant may elect, in its sole discretion, to transfer such rights by a written instrument. All persons entitled to utilize these easements shall use reasonable care in, and repair any material damage resulting from, the use of such easements. Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding due to heavy rainfall, excessive spring run-off, or natural disasters. Swales and drainage areas are for the purpose of natural flow of water only. Owners or Residents are strictly prohibited from disrupting the drainage pattern and shall not interfere with, obstruct, rechannel, construct upon, alter, build-in, fill-in, or impair any Swale or the drainage pattern over his or her Lot or Parcel from or to any other Lot or Parcel as that pattern may be established by Declarant, a Merchant Builder, or other developer.

3.4 Easements for Utilities. There is hereby created an easement at specific locations approved by Declarant upon, across, over and under the Community Areas for reasonable ingress, egress, installation, replacement, repair or maintenance of all utilities, including, but not limited to, gas, water, sewer, telephone, cable television and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company to install and maintain the necessary

equipment at such locations on the Community Areas but no sewers, electrical lines, water lines or other utility or service lines may be installed or located on the Community Areas, except as initially designed, approved and/or constructed by the Declarant or as approved by the Board.

3.5 Easements for Ingress and Egress. There are hereby created easements for ingress and egress for pedestrian traffic over, through and across sidewalks, paths, walks and lanes that from time to time may exist upon the Community Areas. There is also created an easement for ingress and egress for pedestrian and vehicular traffic over, through and across such driveways and parking areas as from time to time may be paved and intended for such purposes. Such easements shall run in favor of and be for the benefit of the Owners and Residents of the Lots and Parcels and their guests, families, tenants and invitees. Further, certain pathways or trails around and/or through SunCrest may be developed and maintained from time to time as part of hiking and/or bicycling trail systems serving the public in addition to Owners and Residents; in such instances, members of the public shall also have the right to use such trails for the purposes for which they are developed and maintained, subject to reasonable, non-discriminatory rules and regulations as the Board may adopt from time to time and subject to applicable requirements and regulations of Salt Lake County and/or Utah County and any other governmental body or agency having jurisdiction. There is also hereby created an easement upon, across and over the Community Areas and all private streets, private roadways, private driveways and private parking areas within SunCrest for vehicular and pedestrian ingress and egress for police, fire, medical and other emergency vehicles and personnel. The Board shall have the right to relocate and/or reconfigure any and all such easements from time to time as it sees fit without the consent of any Owners (but subject to any necessary approvals of Salt Lake County and/or Utah County or any other governmental body or agency having jurisdiction thereover including in particular, but without limitation, the easements granted herein for police, fire, medical and other emergency vehicles and personnel).

3.6 Delegation of Use. Each Member shall, in accordance with this Declaration and the SunCrest Rules and the limitations therein contained, be deemed to have delegated his or her right of enjoyment in the Community Areas to the members of his or her family, his or her tenants or lessees, his or her guests or invitees or to his or her tenant's family, guests or invitees.

3.7 Transfer of Title. Declarant agrees that it shall convey to the Master Association title to the Master Association Land free and clear of all liens (other than the lien of current general taxes and the lien of any assessments, charges, or taxes imposed by governmental or quasi-governmental authorities) before the closing of the last sale of a Lot or Parcel within SunCrest. The Master Association shall not lease or sublease the Master Association Land or any portion thereof to a third party.

ARTICLE IV

LAND USE CLASSIFICATIONS, PERMITTED USES AND RESTRICTIONS

4.1 Land Use Classifications. As portions of SunCrest are readied for development and sale to Merchant Builders, the Land Use Classifications, restrictions, easements, rights-of-way and

other matters, including new or different uses and restrictions therefor and including any number of subclassifications thereof for any special uses, shall be fixed by Declarant in a Neighborhood Declaration and/or Supplemental Declaration which shall be recorded for that portion of SunCrest. Any such Neighborhood Declaration or Supplemental Declaration shall be construed as a supplement to this Declaration and fully a part hereof for all purposes to the same extent as if all of the provisions thereof were set forth in this Declaration. In exercising its authority to record Neighborhood Declarations and/or Supplemental Declarations, Declarant may impose new Land Use Classifications or new restrictions so long as such are generally in conformance with then existing uses and restrictions applicable to SunCrest and with the scheme of development contemplated by the Master Land Use Plan and this Declaration. The Land Use Classifications for Lots, Parcels and Master Association Land established by a Neighborhood Declaration or Supplemental Declaration shall not be changed except as specifically permitted by this Declaration. The contemplated Land Use Classifications are as follows:

4.1.1 Single Family Residential Use;

4.1.2 Cluster Residential Use;

4.1.3 Residential Condominium Development Use, which may be converted to Apartment Development Use upon approval by the Declarant or the Board;

4.1.4 Apartment Development Use, which may be converted to Residential Condominium Development Use upon approval by the Declarant or the Board;

4.1.5 General Commercial Use;

4.1.6 Shopping Center Use;

4.1.7 Office/Industrial Use;

4.1.8 Master Association Use, which may include Community Areas;

4.1.9 Resort, Hotel or Motel Use;

4.1.10 Timeshare Use;

4.1.11 General Public Uses approved by the Declarant; and

4.1.12 Church Use.

Unless otherwise specifically provided in this Declaration, the definitions and characteristics of such Land Use Classifications, and specific permitted and prohibited uses in such Land Use Classifications, shall be determined in the applicable Neighborhood Declaration or Supplemental Declaration and shall be within the complete discretion of the Declarant. All Neighborhood

Declarations and Supplemental Declarations shall be subject to the zoning laws of applicable Municipal Authority and the Master Development Agreements.

4.2 Covenants, Conditions, Easements and Restrictions Applicable to Lots and Parcels Within All Land Use Classifications. The following covenants, conditions, restrictions and reservations of easements and rights shall apply to all Lots and Parcels, the Owners and lessees thereof, and all Residents, whether or not a Neighborhood Declaration or Supplemental Declaration has been recorded on said property and regardless of the Land Use Classification of such property.

4.2.1 Architectural Control. No Improvements (whether temporary or permanent), alterations, repairs, excavation, grading, landscaping or other work which in any way alters the exterior appearance of any property within SunCrest, or the Improvements located thereon, from its natural or improved state existing on the of date this Declaration is recorded shall be made or done without the prior approval of the Design Review Board, except as otherwise expressly provided in this Declaration. No building, fence, wall, residence or other structure shall be commenced, erected, maintained, improved, altered or made without the prior written approval of the Design Review Board. All subsequent additions to or changes or alterations in any building, fence, wall or other structure, including exterior color scheme, and all changes in the grade of Lots or Parcels, shall be subject to the prior written approval of the Design Review Board. No changes or deviations in or from the plans and specifications once approved by the Design Review Board shall be made without the prior written approval of the Design Review Board.

4.2.2 Animals. No animal, bird, or fish, other than a reasonable number of generally recognized house or yard pets as determined solely by the Board, shall be maintained on any Lot or Parcel and then only if they are kept, and raised thereon solely as domestic pets and not for commercial purposes. All pets must be kept in a fenced yard (including electric) or on a leash at all times. No animal or bird shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of any animal or bird shall be maintained so as to be Visible From Neighboring Property, unless otherwise approved by the Design Review Board. If an Owner or Resident fails to abide by the rules and regulations and/or covenants applicable to pets, the Board may bar such pet from use of or travel upon the Community Areas. The Board may subject ingress, egress, use, or travel upon the Community Areas by a person with a pet to a user fee, which may be a general fee for all similarly-situated persons or a specific fee imposed for failure of an Owner or Resident to abide by the rules, regulations, and/or covenants applicable to pets. In addition, any pet which endangers the health of any Owner or Resident of a Lot or Parcel or which creates a nuisance or an unreasonable disturbance or is not a common household pet, as may be determined in the sole discretion of the Board, must be permanently removed from the SunCrest property upon seven (7) days' written notice by the Board. Upon the written request of any Owner or Resident, the Board shall conclusively determine, in its sole and absolute subjective discretion whether for the purposes of this Section 4.2.2, a particular animal, fish or bird is a generally recognized house or yard pet, whether such a pet is a nuisance or whether the number of animals, fish or birds on any such property is reasonable. Any decision rendered by the Board shall be

enforceable in the same manner as other restrictions contained herein. The Board shall have the authority to exempt from the foregoing restrictions, or portions thereof, a pet shop, veterinarian office or laboratory in a General Commercial Development or Shopping Center Development Land Use Classification. Notwithstanding anything contained herein to the contrary, Declarant reserves the right to permit horses to be maintained on certain Lots and Parcels within SunCrest as determined solely by Declarant.

4.2.3 Temporary Occupancy and Temporary Buildings. No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a Residence, either temporary or permanent. Temporary buildings or structures may be approved by the Design Review Board for use during the construction of any structure on any property, but shall be removed immediately after the completion of construction.

4.2.4 Maintenance of Lawns and Plantings. Except where otherwise provided in a Neighborhood Declaration or Supplemental Declaration, each Owner of a Lot or Parcel shall keep all shrubs, trees, hedges, grass and plantings of every kind located on

4.2.4.1 his or her Lot or Parcel (including set back areas and any applicable portions of Community Areas);

4.2.4.2 planted public right-of-way areas between sidewalks (or bike paths) and the street curb on the front or side of his or her property, if any;

4.2.4.3 any other public right-of-way or easement area which abuts the Owner's Lot or Parcel and which is located between the boundary line of his or her Lot or Parcel and the paved area of any street, sidewalk, bike path or similar area; and

4.2.4.4 any non-street public right-of-way or easement area adjacent to his or her Lot or Parcel, neatly trimmed, and shall keep all such areas properly cultivated and free of trash, weeds and other unsightly material; provided, however, that such Owner shall not be responsible for maintenance of any area over which (1) the Master Association assumes the responsibility in writing; (2) the Master Association has been given such responsibility by a Recorded instrument as provided in Section 10.1 of this Declaration; or (3) a Municipal Authority assumes the responsibility. The Design Review Board may require landscaping by the Owner of all or any portion of an improved or developed Lot or an improved or developed Parcel including the areas described in Subsections 4.2.4.1, 4.2.4.2, 4.2.4.3, and 4.2.4.4 above.

4.2.5 Landscaping. The following landscape criteria shall apply to all Single Family detached and attached Lots, and all landscape plans shall be approved by the Design Review Board. All Owners and Residents are required to install or cause to be installed all Single Family Residential Use landscaping and irrigation based on the following schedule:

4.2.5.1 Front and corner side yard (including street "tree-lawn") landscaping shall be installed within 90 days of closing to an Owner, weather permitting.

4.2.5.2 Rear and side yard landscaping when visible from streets shall be installed within 90 days of closing to an Owner, weather permitting.

4.2.5.3 Interior side and rear yard landscaping shall be installed within one year of closing to an Owner, weather permitting.

Merchant Builders are required to offer a front yard landscape option package to Owners that meet the above minimum requirements. All front yards shall be fully landscaped and irrigated using a combination of turf grass, trees, shrubs, perennials, and groundcovers.

4.2.6 Nuisances: Construction Activities. No weeds, dead trees or plants, rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot or Parcel, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the Residents of such other property. No other nuisance shall be permitted to exist or operate upon any Lot or Parcel so as to be offensive or detrimental to any other property in the vicinity thereof or to its Residents. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, firecrackers, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any such property. Normal construction activities and parking in connection with the building of Improvements on a Lot or Parcel shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots and Parcels shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials may be piled only in such areas as may be approved by the Design Review Board. In addition, any construction equipment and building materials stored or kept on any Lot or Parcel during construction of Improvements may be kept only in areas approved by the Design Review Board, which may also require screening of the storage areas. The Design Review Board in its sole discretion shall have the right to determine the existence of any such nuisance.

4.2.7 Diseases and Insects. No Owner shall permit any thing or condition to exist upon any Lot or Parcel which shall induce, breed or harbor infectious plant diseases or noxious insects.

4.2.8 Repair of Improvements. No Improvement on any Lot or Parcel shall be permitted to fall into disrepair and each such Improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any Improvement is damaged or destroyed, then, subject to the approvals required by Section 4.2.1 above and subject to the provisions of any Neighborhood Declaration or Supplemental Declaration, such Improvement shall be immediately repaired, rebuilt or demolished. If any Improvement should be demolished, then the Owner shall at all times maintain the vacant

Lot or Parcel in a clean sightly condition, and shall clear and shall continue to clear the Lot or Parcel of any weeds, debris, garbage, trimmings or like items.

4.2.9 Antennas and Satellite Dishes. Antennas and satellite dishes shall be prohibited on any Lot or Parcel, except (a) antennas or satellite dishes designed to receive direct broadcast satellite service which are one meter or less in diameter; (b) antennas or satellite dishes designed to receive video programming services via multipoint distribution services which are one meter or less in diameter or diagonal measurement; or (c) antennas or satellite dishes designed to receive television broadcast signals ("Permitted Devices") shall be permitted, *provided that* any such Permitted Device is:

4.2.9.1 located in the attic, crawl space, garage, or other interior spaces of the Dwelling Unit or another approved structure on the Lot or Parcel so as not to be visible from outside the Dwelling Unit or other structure;

4.2.9.2 located in the rear yard of the Dwelling Unit (i.e., the area between the plane formed by the front facade of the Dwelling Unit and the rear lot line) and setback from all lot lines at least eight (8) feet;

4.2.9.3 attached to or mounted on a deck or patio and extending no higher than the eaves of that portion of the roof of the Dwelling Unit directly in front of such antenna; or

4.2.9.4 attached to or mounted on the rear wall of the Dwelling Unit so as to extend no higher than the eaves of the Dwelling Unit at a point directly above the position where attached or mounted to the wall.

Notwithstanding the foregoing, should an Owner determine that a Permitted Device cannot be located in compliance with the above guidelines without precluding reception of an acceptable quality signal, then the Owner may install the device in the least conspicuous alternative location on the Lot or Parcel where an acceptable quality signal can be obtained. The Board may adopt rules establishing a preferred hierarchy of alternative locations and requiring screening of all Permitted Devices, so long as such rules do not unreasonably increase the cost of installation, maintenance, or use of the Permitted Device.

4.2.10 Mineral Exploration. No Lot or Parcel shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind.

4.2.11 Trash Containers and Collection. No garbage or trash shall be placed or kept on any Lot or Parcel, except in covered containers of a type, size and style which are approved by the Design Review Board or required by the applicable Municipal Authority. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make the same available for collection. All rubbish, trash and garbage

shall be removed from the Lots and Parcels and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot or Parcel.

4.2.12 Clothes Drying Facilities. Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any Lot or Parcel unless they are erected, placed or maintained exclusively within a fenced service yard or otherwise concealed and shall not be Visible From Neighboring Property.

4.2.13 Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot or Parcel except (i) such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction) of a building, appurtenant structures, or other Improvements; (ii) that which Declarant or the Master Association may require for the operation and maintenance of SunCrest; or (iii) that used or displayed in connection with any business permitted under a Neighborhood Declaration or Supplemental Declaration.

4.2.14 Signs. Except as otherwise provided in this Declaration, no signs whatsoever (including, but not limited to, commercial, political and similar signs) which are Visible From Neighboring Property shall be erected or maintained on any Lot or Parcel except pursuant to the Design Guidelines and except:

4.2.14.1 Signs required by legal proceedings;

4.2.14.2 Not more than two (2) identification signs for individual residences, each with a face area of seventy-two (72) square inches or less;

4.2.14.3 Signs (including "for sale", "for lease" and "open house" signs) the nature, size, number and location of which have been approved in advance and in writing by the Design Review Board or which comply with signage rules or guidelines adopted by the Design Review Board.

4.2.14.4 Signs of Merchant Builders on any Lot or Parcel approved from time to time by Declarant as to number, size, colors, design, message content, location and type; and

4.2.14.5 Such other signs (including but not limited to construction job identification signs, builders signs, and subdivision, shopping center, apartment and business identification signs) which are in conformance with the requirements of the applicable Municipal Authority and which have been approved in writing by the Design Review Board as to size, colors, design, message content and location.

4.2.15 Restriction on Further Subdivision, Property Restrictions and Rezoning. No Lot or Parcel shall be further subdivided or separated into smaller Lots, Parcels or interests by any Owner, and no portion less than all of any such Lot or Parcel, nor any easement or other interest therein, shall be conveyed or transferred by any Owner, without the prior

written approval of the Declarant (or the Master Association following conversion of the Class B voting Memberships to Class A voting Memberships), which approval must be evidenced on the Plat or other instrument creating the subdivision, easement or other interest. This provision shall not apply to transfers of an ownership interest in the whole of any Lot or Parcel. Further, this provision shall not, in any way, limit Declarant from subdividing or separating into Lots or Parcels any property at any time owned by Declarant and which has not previously been platted or subdivided into Lots. No buildings or other Improvements shall be constructed on any Lot or Parcel until a Neighborhood Declaration or Supplemental Declaration has been recorded on such property. No Neighborhood Declaration, Supplemental Declaration or further covenants, conditions, restrictions or easements shall be recorded by any Owner or other person against any Lot or Parcel without the provisions thereof having been first approved in writing by the Declarant or the Design Review Board and any covenants, conditions, restrictions or easements recorded without such approval being evidenced thereon shall be null and void. No application for rezoning of any Lot or Parcel, and no applications for variances or use permits, shall be filed with a Municipal Authority unless the proposed use of the Lot or Parcel complies with this Declaration and any applicable Neighborhood Declaration or Supplemental Declaration.

4.2.16 Utility Easements. There is hereby created a blanket easement upon, across, over and under each Lot and Parcel for ingress to, egress from, and the installation, replacing, repairing and maintaining of, all utility and service lines and systems, including, but not limited to water, sewers, gas, telephones, electricity, television cable or communication lines and systems, etc. as such utilities are installed in connection with the initial development of the Lot or Parcel and the construction of the first Dwelling Unit or other Improvement thereon. Pursuant to this easement, a providing utility or service company may install and maintain facilities and equipment on the property and affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of buildings on the Lots and Parcels. Notwithstanding anything to the contrary contained in this Subsection, no sewers, electrical lines, water lines, or other utilities or service lines may be installed or relocated on any Lot or Parcel except as initially programmed and approved by the Declarant or the Design Review Board, or, if installed after a Neighborhood Declaration or Supplemental Declaration is Recorded, as approved by the Merchant Builder of such property and the Design Review Board.

4.2.17 Party Walls. Except as hereinafter provided, the rights and duties of Owners of Lots and Parcels with respect to party walls or party fences between Lots and Parcels, shall be as follows:

4.2.17.1 The Owners of contiguous Lots or Parcels who have an exterior party wall or exterior party fence shall both equally have the right to use such wall or fence, provided that such use by one Owner does not interfere with the use and enjoyment of the same by the other Owner.

4.2.17.2 Except as provided below the cost of reasonable repair and maintenance of a party wall or a party fence shall be shared equally by the adjoining Lot or Parcel Owners.

4.2.17.3 In the event that any party wall or party fence is damaged or destroyed through the act or failure to act of an Owner or Resident or any of his or her tenants, lessees, agents, guests or members of his or her family, (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner or Resident to promptly rebuild and repair the party wall or party fence without cost to the Owner of the adjoining Lot or Parcel. Any dispute over an Owner's liability for such damage shall be resolved as provided in Section 4.2.17.6 below, but any liability imposed on an Owner hereunder shall not prevent the Owner from seeking indemnity therefor from the persons causing such damage.

4.2.17.4 In the event any party wall or party fence is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), other than by the act or failure to act of an adjoining Owner, Resident, or his or her tenants, lessees, agents, guests or family, it shall be the obligation of all Owners whose Lots or Parcels adjoin such party wall or party fence to rebuild and repair such wall or fence at their joint expense, such expense to be allocated among the Owners in accordance with the frontage of their Lots or Parcels on the party wall or party fence.

4.2.17.5 Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any party wall or party fence without the prior consent of all Owners of any interest therein, whether by way of easement or in fee.

4.2.17.6 In the event of a dispute between Owners with respect to the construction, repair or rebuilding of a party wall or party fence, or with respect to the sharing of the cost thereof, such adjoining Owners shall submit the dispute to the Board, the decision of which shall be binding.

Anything in the foregoing to the contrary notwithstanding:

4.2.17.7 In the case of party fences (1) between Community Areas and Lots or Parcels, or (2) constructed by the Declarant or the Master Association on Community Areas within a Lot or Parcel, the Master Association shall be responsible for all maintenance thereof, subject to the provisions of Sections 10.2 and 10.3, except that each Owner of a Lot or Parcel shall remain responsible for painting and maintaining the surface of the portion of the party fence facing his or her Lot or Parcel and/or the portion thereof which is not a portion of the Community Area; and

4.2.17.8 The provisions of this Section 4.2.17 shall not apply to any party wall which separates the interiors of two Dwelling Units. The rights of the owners of such Dwelling Units with respect to such party walls shall be governed by the

Neighborhood Declaration, Supplemental Declaration or additional covenants or by Plats to be recorded by the developer of the Dwelling Units.

4.2.18 Perimeter Fences and Walls. Perimeter fences or walls along major roadways, as determined solely by the Declarant, shall be maintained by the Master Association, subject to the provisions of Sections 10.2 and 10.3, except that each Owner of a Lot or Parcel shall remain responsible for painting and maintaining the surface of the portion of the perimeter wall or fence facing his or her Lot or Parcel. The Master Association shall be responsible for the maintenance of all landscaping outside the perimeter walls and fences, except any maintenance assumed by a Municipal Authority or by a Sub-Association.

4.2.19 Utility Service. No lines, wires or other devices for the communication or transmission of electric current or power, including telephone, television and radio signals, and cable information highways, shall be erected, placed or maintained anywhere in or upon any Lot or Parcel unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures as approved by the Declarant or the Design Review Board, except for:

4.2.19.1 overhead power poles and lines to perimeter areas of SunCrest as approved by Declarant; and

4.2.19.2 boxes on the ground for electrical or communication connections, junctions, transformers and other apparatus customarily used in connection with such underground lines, wires and other devices.

4.2.20 Overhead Encroachments. No tree, shrub or planting of any kind on any Lot or Parcel shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way, or other area from ground level to a height of eight (8) feet without the prior approval of the Design Review Board.

4.2.21 Trucks, Trailers, Campers and Boats. No motor vehicle classed by manufacturer rating as exceeding 3/4-ton, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, boat, boat trailer or other similar equipment or vehicle may be parked, maintained, constructed, reconstructed or repaired on any Lot or Parcel or on any street in SunCrest so as to be Visible From Neighboring Property, or visible from the Community Areas or the streets; provided, however, the provisions of this Section 4.2.21 shall not apply to (i) pickup trucks of less than 3/4-ton capacity with camper shells not exceeding seven (7) feet in height measured from ground level and mini-motor homes not exceeding seven (7) feet in height and eighteen (18) feet in length which are parked as provided in Section 4.2.23 below and are used on a regular and recurring basis for basic transportation, or (ii) trucks, trailers and campers parked in an approved recreational vehicle storage area within a Residential Area or other approved areas designated for such parking in Commercial Area Land Use Classifications in connection with permitted commercial activities conducted in such Commercial Area Land Use Classifications.

4.2.22 Motor Vehicles. No automobile, motorcycle, motorbike or other motor vehicle shall be constructed, reconstructed or repaired upon any Lot, Parcel or street or other Community Area in SunCrest, and no inoperable vehicle may be stored or parked on any such Lot, Parcel or street, so as to be Visible From Neighboring Property or to be visible from Community Areas or streets; provided, however, that the provisions of this Section 4.2.22 shall not apply to (i) emergency vehicle repairs; (ii) temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any Improvement approved by the Design Review Board; (iii) any automobile repair business which may be permitted in any Commercial Areas; (iv) the parking of such vehicles during normal business hours in areas designated for parking in a non-Residential Land Use Classification; (v) vehicles parked in garages on Lots or Parcels so long as such vehicles are in good operating condition and appearance and are not under repair; (vi) the storage of such vehicles in an area designated for such purposes on a Neighborhood Declaration or Supplemental Declaration or on a site plan approved by the Design Review Board; and (vii) non-Commercial vehicle repair within a garage which is closed except as necessary for ingress and egress.

4.2.23 Parking. It is the intent of the Declarant to restrict on-street parking as much as possible. Vehicles of all Owners and Residents, and of their employees, guests and invitees, are to be kept in garages and residential driveways of the Owner and other designated parking areas wherever and whenever such facilities are sufficient to accommodate the number of vehicles at a Lot or Parcel; provided, however, this Section 4.2.23 shall not be construed to permit the parking in the above described areas of any vehicle whose parking on SunCrest is otherwise prohibited or the parking of any inoperable vehicle. Recreational vehicles shall be parked in covered garages except for limited periods in Residential driveways or other designated parking areas as determined by the Board and promulgated as part of the SunCrest Rules.

4.2.24 Roofs. No apparatus, structure or object shall be placed on the roof of a Dwelling Unit without the prior written consent of the Design Review Board. Any apparatus, structure or object which is approved by the Design Review Board for placement on the roof of a Dwelling Unit shall be mounted on the rear of the roof so that such apparatus or object is below the highest ridge on the roof and is not Visible From Neighboring Property or street by a Person standing anywhere on the curb or street in front of the Dwelling Unit or at the rear or sides of Lots backing upon open space, park, public right of way. No air conditioning units or evaporative coolers extending from windows or protruding from roofs are permitted.

4.2.25 Arterial Fencing and Walls. All perimeter walls and fencing along arterials (for the purposes of this Section 4.2.25 "arterials" shall be as designated by the Declarant) must be constructed and maintained in accordance with the specifications and regulations established by the Declarant or the Design Review Board.

4.2.26 Draperies and Window Coverings. Within thirty (30) days of occupancy each Owner of a Lot or Parcel consisting of a Residential Use shall install permanent draperies or

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suitable window treatments on all exterior windows. In no event shall windows be covered with paper, aluminum foil, bed sheets or any other materials or temporary coverings not specifically intended for such purpose. No interior or exterior reflective material shall be used as a window covering unless such material has been approved by the Design Review Board.

4.2.27 Drainage. No Owner or Resident shall interfere with or obstruct the drainage pattern over his or her Lot or Parcel from or to any other Lot or Parcel as that pattern may be established by Declarant, Merchant Builder, or other developer or as described in Section 3.3 hereof with respect to Swales.

4.2.28 Garage Openings. All garages shall be fully enclosed. No carports shall be permitted. No garage door shall be open except when necessary for access to and from the garage.

4.2.29 Right of Entry. During reasonable hours and upon reasonable notice to the Owner or other Resident or occupant of a Lot or Parcel, any member of the Design Review Board, any member of the Board or any authorized representative of either of them, shall have the right to enter upon and inspect any Lot or Parcel, and the Improvements thereon, except for the interior portions of any completed Dwelling Unit, for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with and such persons shall not be deemed guilty of trespass by reason of such entry.

4.2.30 Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant or by Merchant Builders or their duly authorized agents, of structures, Improvements or signs necessary or convenient to the development or sale of property within SunCrest if those structures, Improvements or signs have been approved by the Design Review Board.

4.2.31 Health, Safety and Welfare. In the event additional uses, activities and facilities are deemed by the Design Review Board to be a nuisance or to adversely affect the health, safety or welfare of Owners and Residents, the Design Review Board may make rules restricting or regulating their presence within SunCrest as part of the Design Guidelines.

4.2.32 Model Homes. The provisions of this Declaration and of Neighborhood Declarations or Supplemental Declarations which, in certain instances, prohibit non-Residential use of Lots and Parcels and regulate parking of vehicles shall not prohibit the construction and maintenance of model homes by persons engaged in the construction of Residential Dwelling Units at SunCrest and parking incidental to the visiting of such model homes so long as the location of such model homes and the opening and closing hours are approved by the Design Review Board, and the construction, operation and maintenance of such model homes otherwise complies with all of the provisions of this Declaration. The Design Review Board may also permit Lots and other areas to be used for parking in connection with the showing of model homes so long as such parking and parking areas are

in compliance with the ordinances of the governing Municipal Authority and any rules of the Design Review Board. Any homes constructed as model homes shall cease to be used as model homes at any time the Owner thereof is not actively engaged in the construction and sale of Single Family Residences at SunCrest and no home shall be used as a model home for the sale of homes not located at SunCrest.

4.2.33 Incidental Uses. The Declarant or the Design Review Board may approve uses of property within a Land Use Classification which are incidental to the full enjoyment by the Owners of the property within that Land Use Classification. Such approval may be subject to such regulations, limitations and restrictions, including termination of the use, as the Declarant or Design Review Board may wish to impose, in its sole discretion, for the benefit of SunCrest as a whole. By way of example and not of limitation, the uses which the Board may permit are private roadways and streets within an area having a Land Use Classification of Cluster Residential Use or Condominium Development Use, tennis clubs and/or swimming clubs intended primarily for the benefit of all or certain Owners and Residents within areas having a Land Use Classification of Cluster Residential Use, Residential Condominium Development or Single Family Residential Use; a business office for the Master Association within an area having a Land Use Classification of Master Association Use; tennis courts; swimming pools and other recreational facilities intended for usage by the Residents or Owners of more than a single Lot or Parcel within any Residential Area; and a sales, information and marketing center operated by the Declarant, Merchant Builder, or other developer within an area having a Land Use Classification of Master Association Use.

4.2.34 Leases. Any Lease between an Owner and a lessee respecting a Lot or Dwelling Unit shall be subject in all respects to the provisions of the Governing Documents, and any failure by the lessee to comply with the terms of such Governing Documents shall be a default under the Lease. Specifically, all Leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Governing Documents. The Lease shall also obligate the tenant to comply with the foregoing and shall provide that in the event of noncompliance, the Board, in addition to any other remedies available to it, may evict the tenant on behalf of the Owner and specifically assess all costs associated therewith against the Owner and the Owner's property. Except as otherwise permitted by Declarant, all such Leases shall be in writing and shall have a minimum term of six (6) months.

4.2.35 Tree Removal. No trees shall be removed, except for (a) diseased or dead trees; and (b) trees which must be removed to promote the growth of other trees or for safety reasons, unless approved by the Design Review Board.

4.2.36 Nondisturbance Areas. Certain areas at SunCrest possess great natural beauty and shall be designated as "Nondisturbance Areas" at the Declarant's sole discretion, as such areas may be identified on a Plat or other written document provided to an Owner. Declarant intends to preserve such Nondisturbance Areas through the use of a coordinated plan of Lot development and the terms of this Declaration. No Improvements (whether temporary or permanent), landscaping, alterations, repairs, excavation, grading or other work which in any

way alters the exterior appearance of any Nondisturbance Area from its natural state existing on the date this Declaration is Recorded, or existing on the date a Neighborhood Declaration or Supplemental Declaration is Recorded, shall be made or done without the prior approval of the Design Review Board. No building, fence, wall, Dwelling Unit or other Improvement shall be commenced, erected, maintained, improved, altered or made without the prior written approval of the Design Review Board. All subsequent additions to or changes or alterations in any building, fence, Dwelling Unit or other Improvement, including exterior color scheme, and all changes in the grade of Nondisturbance Areas, shall be subject to the prior written approval of the Design Review Board. No changes or deviations in or from the plans and specifications once approved by the Design Review Board shall be made without the prior written approval of the Design Review Board.

4.2.37 Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless it is an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the Design Review Board.

4.2.38 Lighting. Except for seasonal Christmas decorative lights, which may be displayed between November 15 and January 15 only, all exterior lights must be approved in accordance with this Declaration.

4.2.39 Violations of Law. Any activity which violates local, state, or federal laws or regulations is prohibited; however, the Board shall have no obligation to take enforcement action in the event of a violation.

4.2.40 Easement for Development. The Declarant hereby reserves an easement throughout SunCrest for the purpose of completing all Improvements contemplated by this Declaration, including but not limited to Improvements to the Additional Land. Declarant shall be entitled to use all Community Areas within SunCrest, roadways within SunCrest and other facilities located in SunCrest to access the Additional Land in order to make Improvements thereto and to continue with the development of SunCrest.

4.2.41 Sales Offices. Declarant hereby reserves the right to maintain sales offices, management offices, signs advertising SunCrest, and models in any areas of SunCrest owned by the Declarant. Declarant may relocate sales offices, management offices and models to other locations within SunCrest at any time.

4.2.42 Poles. No pole, including but not limited to a flag pole, shall be placed, constructed, or maintained on any Lot, Parcel or other part of SunCrest unless such pole is approved in advance by the Design Review Board. The Design Review Board may adopt one or more rules or regulations permitting an Owner to install and maintain a flag pole upon Owner's Lot or Parcel, provided that the location and size of such flag pole (and the number and size of any flag(s) mounted thereon) may be regulated by the Design Review Board, and may, if so provided in such rule or regulation, be made subject to the prior approval thereof by the Design Review Board. Nothing in this section shall be deemed to prohibit the

Declarant from installing and maintaining the flag poles on, at, or adjacent to model homes within SunCrest. Poles to which basketball backboards, goals, and related equipment are affixed, shall also be governed by this section.

4.3 Covenants, Conditions, Easements and Restrictions Applicable to Lots Within Single Family Residential Use Classification. The following covenants, conditions, restrictions and reservations of easements and rights shall apply only to Lots and the Owners and Residents thereof lying within a Single Family Residential Use Classification:

4.3.1 General. Property classified for Single Family Residential Development under a Neighborhood Declaration or Supplemental Declaration may be used only for the construction and occupancy of Single Family Dwelling Units and typical residential activities incidental thereto, such as the construction and use of a family swimming pool, together with any common recreational facilities or any other Community Areas or amenities. All property within such Land Use Classification shall be used, improved and devoted exclusively to Single Family Residential Use. No structure whatsoever, other than one private, Single Family Residence, together with a private garage for cars and (if desired) a guest house or servant quarters, shall be erected, placed or permitted to remain on any Lot.

4.3.2 Business Activities. Property classified for Single Family Residential Development under a Neighborhood Declaration or Supplemental Declaration shall not be used for any business, trade, garage sale, moving sale, rummage sale, or similar activity, except that an Owner or Resident may conduct business activities within the Dwelling Unit so long as: (a) the existence or operation of the activity is not apparent or detectable by sight, sound, or smell from outside the Dwelling Unit; (b) the activity conforms to all zoning requirements for SunCrest; (c) the activity does not involve regular visitation of the Dwelling Unit by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the project; and (d) the activity is consistent with the residential character of the project and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other Residents of the project, as may be determined in the sole discretion of the Board. This Section 4.3.2 shall not apply to any activity conducted by the Declarant or a Merchant Builder approved by the Declarant with respect to its development and sale of the Lots or Parcels or its use of any Dwelling Units which it owns within SunCrest.

4.3.3 Tenants. The entire Dwelling Unit on a Lot may be let to a Single Family tenant or lessee from time to time by the Owner, subject to the provisions of this Declaration, the SunCrest Rules and any applicable Design Guidelines.

4.4 Covenants, Conditions, Easements and Restrictions Applicable to Property Within a Residential Condominium Development Use Classification, a Cluster Residential Development and a Timeshare Development Use Classification. The following covenants, conditions, restrictions and reservations of rights shall apply only to Dwelling Units and the Owners and Residents thereof lying within a Residential Condominium Development Land Use Classification, a Cluster Residential Development Use Classification or a Timeshare Development Use Classification:

4.4.1 General. Property classified as a Residential Condominium Development or a Cluster Residential Development or a Timeshare Development under a Neighborhood Declaration or Supplemental Declaration may be used only for the construction and occupancy of Single Family Dwelling Units together with common recreational facilities and other Community Areas. All property within such Land Use Classifications shall be used, improved and devoted exclusively to Single Family Residential Use.

4.4.2 Business Activities. Property classified for the purposes set forth in Section 4.4.1 under a Neighborhood Declaration or Supplemental Declaration shall not be used for any business, trade, garage sale, moving sale, rummage sale, or similar activity, except that an Owner or Resident may conduct business activities within the Dwelling Unit so long as: (a) the existence or operation of the activity is not apparent or detectable by sight, sound, or smell from outside the Dwelling Unit; (b) the activity conforms to all zoning requirements for SunCrest; (c) the activity does not involve regular visitation of the Dwelling Unit by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the project; and (d) the activity is consistent with the residential character of the project and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the project, as may be determined in the sole discretion of the Board. This Section 4.4.2 shall not apply to any activity conducted by the Declarant or a Merchant Builder approved by the Declarant with respect to its development and sale of the Lots or Parcels or its use of any Dwelling Units which it owns within SunCrest nor shall it apply to any Timeshare Development established by Declarant which is governed by a separate Neighborhood Declaration.

4.4.3 Tenants. The entire Dwelling Unit may be let to a Single Family Tenant or lessee from time to time by the Owner, subject to the provisions of this Declaration, the SunCrest Rules and any applicable Master Association rules.

4.5 Covenants, Conditions, Easements and Restrictions Applicable to Property Within the Commercial Areas, including Apartment Developments, General Commercial Developments, Shopping Center Developments, Office/Industrial Developments, Resort, Hotel or Motel Developments or Timeshare Developments. The following covenants, conditions, restrictions and reservation of rights shall apply only to Commercial Areas, the Improvements constructed thereon and the Owners and Residents and occupants within Commercial Area Land Use Classifications:

4.5.1 General. Property classified as and located within a Commercial Area will generally be developed as individual Commercial projects by one or more Merchant Builders. It is contemplated that the Declarant will sell or lease one or more Parcels to individual Merchant Builders who will construct Improvements with respect to such a Parcel in accordance with a specific Neighborhood Declaration or Supplemental Declaration.

4.5.2 Tenants. All or some portion of a Parcel in a Commercial Area may be leased to one or more tenants or lessees from time to time by the Owner of a Parcel, subject to the provisions of this Declaration, and the SunCrest Rules.

4.6 Variances. Subject to the provisions of the Design Guidelines, the Design Review Board may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in Article IV of this Declaration or in any Neighborhood Declaration or in any Supplemental Declaration if the Design Review Board determines in its discretion (a) either (i) that a restriction would create an unreasonable hardship or burden on an Owner or (ii) that a change of circumstances since the date this Declaration is Recorded has rendered such restriction obsolete and (b) that the activity permitted under the variance will not have any substantial adverse affect on the Owners and Residents of SunCrest and is consistent with the high quality of life intended for Owners and Residents of SunCrest.

ARTICLE V

ORGANIZATION OF MASTER ASSOCIATION

5.1 Formation of Master Association. The Master Association shall be a Utah nonprofit corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws and this Declaration. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

5.2 Board of Trustees and Officers. The affairs of the Master Association shall be conducted by a Board of up to nine (9) trustees (odd numbered totals only) and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws as the same may be amended from time to time. Notwithstanding the foregoing, commencing upon the date Commercial Areas are designated, the Commercial Owners at SunCrest shall retain the perpetual right to appoint or elect one trustee to serve on the Board, so long as such Commercial Areas exist. The initial Board shall be composed of at least five (5) trustees. The Board may also appoint various committees and appoint a Manager who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Master Association. The Board shall determine the compensation to be paid to the Manager. The Board's responsibilities shall include, but shall not be limited to, the following:

5.2.1 administration, including administrative support as required for the Design Review Board;

5.2.2 preparing and administering an operational budget;

5.2.3 establishing and administering an adequate reserve fund;

5.2.4 scheduling and conducting the annual meeting and other meetings of the Members;

5.2.5 collecting and enforcing the Assessments;

5.2.6 accounting functions and maintaining records;

5.2.7 promulgation and enforcement of the SunCrest Rules and the Design Guidelines;

5.2.8 maintenance of the Community Areas; and

5.2.9 all the other duties imposed upon the Board pursuant to the Governing Documents, including enforcement thereof.

The Board shall not, however, be responsible for those duties and areas of operation specifically designated under the Governing Documents as the responsibility of the Design Review Board.

5.3 The SunCrest Rules. By a majority vote, the Board may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations to be known as the SunCrest Rules. The SunCrest Rules may restrict and govern the use of any area by any Member or Resident, by the family of such Member, or by any invitee, licensee or tenant of such Member; provided, however, that the SunCrest Rules shall not discriminate among Members and shall not be inconsistent with the Governing Documents.

5.4 Personal Liability. No Trustee or member of any committee of the Master Association (including but not limited to the Design Review Board), no officer of the Master Association and no Manager or other employee of the Master Association shall be personally liable to any Member or to any other person, including the Master Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Master Association, the Board, the Manager, any representative or employee of the Master Association or any committee, committee member or officer of the Master Association; provided, however, the limitations set forth in this Section 5.4 shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct.

5.5 Sub-Associations. Prior to such time as a Sub-Association is formed by a Merchant Builder developing a Parcel or subdivision at SunCrest, the articles of incorporation and bylaws or other governing documents for such Sub-Association must be approved by the Declarant so long as it holds a Class B Membership, the Master Association and the Design Review Board. The governing documents for such Sub-Association shall specify that the rights of its members are subject and subordinate to the provisions of the Governing Documents.

5.6 Professional Management. The Master Association may carry out through the Manager those of its functions which are properly subject to delegation. The Manager so engaged shall be an independent contractor and not an agent or employee of the Master Association, shall be responsible for managing SunCrest for the benefit of the Master Association and the Owners, and shall, to the extent permitted by law and by the terms of the agreement with the Master Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Master Association itself. Subject to the provisions of the Master Development Agreements, any such management agreement may be terminated by the Declarant without cause at any time while the Class B Membership as described in Section 6.4 exists. In addition, subject to the provisions of the Master Development Agreements, any such management agreement executed on or before the

termination of the Class B Membership may be terminated by the Master Association without cause at any time after the termination of such Class B Memberships. The above termination provisions shall not apply to any other types of service contracts.

5.7 Implied Rights. The Master Association may exercise any right or privilege given to it expressly by the Governing Documents, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents, or by law, all rights and powers of the Master Association may be exercised by the Board without a vote of the Voting Members. The Board may institute, defend, settle, or intervene on behalf of the Master Association in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Community Areas, enforcement of the Governing Documents, or any other civil claim or action. However, the Governing Documents shall not be construed as creating any independent legal duty to institute litigation on behalf of or in the name of the Master Association or its Members. In exercising the Master Association's rights and powers, making decisions on behalf of the Master Association, and conducting the Master Association's affairs, Board trustees shall be subject to, and their actions shall be judged in accordance with, the standards set forth in the Bylaws.

ARTICLE VI

MEMBERSHIPS AND VOTING

6.1 Owners of Lots and Parcels. Every Person who is the Owner of a Lot or Parcel that is subject to Assessment shall be a Member of the Master Association (provided, however, the Declarant shall remain a Member in the Master Association at all times as a Class B Member with voting rights, notwithstanding its temporary exemption status from required Assessment payments). Each such Owner shall have the following number of Memberships:

6.1.1 One Membership for each Lot owned by the Member;

6.1.2 In the case of the Owner of a Parcel designated for Residential Condominium Development but as to which a condominium regime has not been recorded, one Membership for each Dwelling Unit permitted upon the Parcel under the Master Land Use Plan then in effect for SunCrest, the number of such Dwelling Units to be determined on the assumption that the number of Dwelling Units within a density classification on the Master Land Use Plan will be spread evenly over all land within the density classification. If a site plan for the Parcel is subsequently approved by the Design Review Board and the Municipal Authority for a number of Dwelling Units different than the number of Dwelling Units assumed pursuant to the Master Land Use Plan, the number of Memberships will be adjusted, as to the portion of the Parcel covered by the site plan and effective as of the date of adjustment, to reflect the actual number of Dwelling Units authorized by the approved site plan;

6.1.3 In the case of the Owner of a Parcel designated for Single Family Residential Development, Cluster Residential Development or, at Declarant's sole option, Timeshare

Development, one Membership for each Dwelling Unit permitted upon the Parcel under the Master Land Use Plan then in effect for SunCrest. If a Plat or other instrument creating Lots is recorded covering all or part of the area within the Parcel, the Parcel shall be reduced in size by the area so platted and the number of Memberships held by the Owner, as Owner of the Parcel, shall be reduced by a number equal to the number of Lots in the recorded Plat. All Memberships attributable to the Parcel shall cease when the land area ceases to be a Parcel because all of the area in the Parcel has been platted or otherwise dedicated to the public and no unplatted Single Family Residential Use, Cluster Residential Use or Timeshare Use area remains within the Parcel;

6.1.4 Except as otherwise provided in Section 6.1.5 below, in the case of the Owner of a Parcel designated for or as a General Commercial Area, one Membership for each one thousand (1,000) square feet of floor area designated as being permitted upon the Parcel under the Master Land Use Plan then in effect for SunCrest. If a site plan for the Parcel is subsequently approved by the Design Review Board and the Municipal Authority for a number of square feet of floor area different than the square feet of floor area assumed pursuant to the Master Land Use Plan, the number of Memberships will be adjusted, as to the portion of the Parcel covered by the site plan and effective as of the date of adjustment, to reflect the actual square feet authorized by the approved site plan; and

6.1.5 One Membership for each one thousand (1000) square feet of floor area in each office condominium or other unit in a Commercial Condominium Development. Provided, however, office condominiums or other units in a Commercial Condominium Development having nine hundred ninety-nine (999) square feet or less of floor area shall each have one Membership.

6.1.6 No Memberships shall be allocated to Community Areas, Exempt Property (except as otherwise provided regarding Declarant), property utilized for a Church Use or other General Public Uses.

6.1.7 Each such Membership shall be appurtenant to and may not be separated from ownership of the Lot or Parcel to which the Membership is attributable. As provided in this Section 6.1, there shall be only one Membership for each Lot, for each Dwelling Unit and for each one thousand (1,000) square feet of floor area in a Commercial Area which Memberships shall be shared by any joint Owners of, or Owners of undivided interests in, a Lot or Parcel.

6.2 Lessees. Lessees of Rental Apartments shall not be Members of the Master Association. The Owner of Rental Apartments shall have one Membership for each one thousand (1,000) square feet of floor area therein. In the event Rental Apartments are converted to Residential Condominium Use, then at the time the condominium regime is recorded, there shall be one Membership in the Master Association for each Dwelling Unit in the Residential Condominium Development.

6.3 Declarant. The Declarant shall be a Member of the Master Association for so long as the Declarant holds a Class B Membership pursuant to Section 6.4 below or for so long as Declarant owns any Assessable Property in SunCrest.

6.4 Voting. The Master Association shall have two classes of voting Memberships:

6.4.1 Class A Memberships shall be all Memberships except the Class B Memberships held by the Declarant and the Merchant Builders. Each Owner shall be entitled to one (1) vote for each Class A Membership held by the Owner, subject to the authority of the Board to suspend the voting rights of the Owner for violations of this Declaration in accordance with the provisions hereof. Notwithstanding the forgoing, no vote shall be cast or counted for any Class A Membership not subject to Assessment.

6.4.2 The Class B Memberships shall be held only by the Declarant and any successor of Declarant who takes title for the purpose of development and sale and who is designated as such in a Recorded instrument executed by Declarant, and those Merchant Builders described below in this Section 6.4. The Declarant shall initially be entitled to 3,788 votes; this number shall be decreased by one (1) vote for each Class A Membership existing at any one time. This number shall be increased by the appropriate number of votes allocated to any Additional Property acquired by Declarant which is not currently owned or under contract or option to purchase in the sole discretion of Declarant ("Additional Development Land"). The Class B Memberships shall cease and shall be converted to Class A Memberships, on the basis of the number of Lots and Parcels owned by the Declarant and Merchant Builders, on the happening of the first of the following events:

6.4.2.1 When the total votes outstanding in the Class A Memberships equal or exceed 2,841, which number shall be increased to equal 75% of the total votes allocated by Declarant to any Additional Development Land; or

6.4.2.2 Twenty Five (25) years from the date this Declaration is Recorded;
or

6.4.2.3 when, in its discretion, the Declarant so determines.

6.4.3 From and after the happening of such events, whichever occurs first, the Class B Member shall be deemed to be a Class A Member entitled to one (1) vote for each Lot and one (1) vote for each membership appurtenant to the Parcels which owns as set forth in Section 6.1 hereof. At such time, the Declarant shall advise the Membership of the termination of Class B status.

6.4.4 The sale in one transaction of an unimproved Parcel or a group of five or more Lots by the Declarant to a Merchant Builder, who is in the business of subdividing and/or building Dwelling Units for sale to individual home purchasers or developing General Commercial Use property, shall not convert the Class B Memberships attributable to that Parcel or those Lots to Class A Memberships; provided, however, that any other sale of

Lot(s) or Parcel(s) shall convert the Membership(s) attributable to that Lot(s) or Parcel(s) to Class A Membership(s).

6.4.5 Until such time as the Class B Memberships are converted to Class A Memberships, each Class B Member other than Declarant shall be conclusively presumed, by accepting the conveyance of a Lot's or Parcel's legal title from Declarant or another Class B Member, to have (i) given Declarant an irrevocable and exclusive proxy to cast such Class B Member's Votes on each such question coming before the Membership while such Class B Member holds such title; and (ii) agreed with Declarant that such proxy is given to and relied on by Declarant in connection with Declarant's sale or conveyance of such Lots or Parcel to such Class B Member, and in connection with Declarant's development, construction, marketing, sale and leasing of SunCrest or the Additional Land, and is coupled with an interest.

6.4.6 The Declarant, as holder of the right to vote the Class B Memberships, may appoint a majority of the Trustees as provided in this Declaration.

6.4.7 Except as otherwise expressly provided in this Declaration or in any of the other Governing Documents, any issue put to a vote by ballot without a meeting or at a duly called meeting of Association Members at which a quorum is present shall be decided by a simple majority of all votes represented in person or by valid proxy at such meeting, regardless whether such votes are otherwise deemed to be Class A votes or Class B votes.

6.5 Exercise of Voting Rights. Except as otherwise specified in this Declaration or the Bylaws, the vote for each Lot owned by a Class A Member shall be exercised by a Voting Member representing the Neighborhood of which the Lot is a part, as provided in Section 6.6. The Voting Member may cast all such votes as it, in its sole discretion, deems appropriate. In any situation in which a Member is entitled personally to exercise the vote for his or her Lot and there is more than one Owner of a particular Lot, the vote for such Lot shall be exercised as such co-Owners determine among themselves and advise the Secretary of the Master Association in writing prior to any meeting. Absent such advice, the Lot's vote shall be suspended if more than one Person seeks to exercise it.

6.6 Neighborhoods, Voting Members and Voting Groups.

6.6.1 Neighborhoods. Every Lot and Parcel shall be located within a Neighborhood and subject to a Neighborhood Declaration or Supplemental Declaration including any assessment provisions contained therein. In the discretion of the Owner(s) and developer(s) of each Neighborhood, the Lots and Parcels within a particular Neighborhood may be subject to additional covenants and/or the Owners of Lots may all be required to be members of a Sub-Association in addition to being Members of the Master Association. The Declarant may designate two or more Neighborhoods as a Village. A Village shall not have any legal rights hereunder, but shall merely act as a name or geographical designation for two or more Neighborhoods.

6.6.1.1 Exhibit "C" to this Declaration, and each amendment to this Declaration filed to subject Additional Land to this Declaration, shall initially assign the property described therein to a specific Neighborhood by name, which Neighborhood may be then existing or newly created. The Declarant may unilaterally amend this Declaration or any amendment to this Declaration to redesignate Neighborhood boundaries; provided, two or more Neighborhoods shall not be combined without the consent of Owners of a majority of the Memberships in the affected Neighborhoods.

6.6.1.2 The Owner(s) of a majority of the total number of Memberships within any Neighborhood may at any time petition the Board to divide the property comprising the Neighborhood into two or more Neighborhoods. Such petition shall be in writing and shall include a plat or survey of the entire parcel which indicates the boundaries of the proposed Neighborhood(s) or otherwise identifies the Lots and/or Parcels to be included within the proposed Neighborhood(s). Such petition shall be granted upon the filing of all required documents with the Board unless the Board denies such application in writing within thirty (30) days of receipt. The Board may deny an application upon making a determination, in its sole and exclusive subjective discretion, that the proposed division into separate Neighborhoods would not be in the best interest of the Master Association and SunCrest. All applications and copies of any denials shall be filed with the books and records of the Master Association and shall be maintained as long as this Declaration is in effect.

6.6.2 Voting Members. The Class A Members within each Neighborhood shall elect one Voting Member for each 50 Class A Memberships within the Neighborhood (rounded to the nearest 50). Each Neighborhood shall have at least one vote. For example, if there were 1 to 74 Class A Memberships in a Neighborhood there would be one Voting Member. If there were 75 to 124 Class A Memberships, there would be two Voting Members. On all Master Association matters requiring a Membership vote, each such Voting Member shall be entitled to cast that number of votes determined by dividing the total number of Class A votes attributable to Memberships in the Neighborhood by the number of Voting Members elected from such Neighborhood, except as otherwise specified in this Declaration or the Bylaws. The Class A Members within each Neighborhood shall also elect one or more alternate Voting Members to be responsible for casting such votes in the absence of a Voting Member.

6.6.2.1 The Voting Member(s) and alternate Voting Member(s) from each Neighborhood shall be elected on an annual basis, either by written ballot or at a meeting of the Class A Members within such Neighborhood, as the Board determines; provided, upon written petition of Class A Members holding at least 10 percent of the votes attributable to Memberships within any Neighborhood, the election for such Neighborhood shall be held at a meeting. The presence, in person or by proxy, of Class A Members representing at least thirty percent (30%) of the

total Class A votes attributable to Memberships in the Neighborhood shall constitute a quorum at any Neighborhood meeting.

6.6.2.2 The Board shall call for the first election of the Voting Member(s) and alternate Voting Member(s) from a Neighborhood not later than one year after the first conveyance of a Lot or Parcel in the Neighborhood to a Person other than Declarant or a Merchant Builder. Subsequent elections shall be held within thirty (30) days of the same date each year or at any other time during the year as reasonably determined by the Neighborhood governing board or Neighborhood Class A Members. Each Class A Member shall be entitled to cast one (1) equal vote for each Membership which it owns in the Neighborhood for each position. The candidate for each position who receives the greatest number of votes shall be elected to serve a term of one year and until a successor is elected. Any Owner of a Lot or Parcel in the Neighborhood may submit nominations for election or declare himself or herself a candidate in accordance with procedures which the Board shall establish.

6.6.2.3 Any Voting Member may be removed, with or without cause, upon the vote or written petition of Owners of a majority of the total number Memberships owned by Class A Members in the Neighborhood which such Voting Member represents.

6.6.2.4 Until such time as the Board first calls for election of a Voting Member for a Neighborhood, the Owners within such Neighborhood may personally cast the votes attributable to their respective Memberships on any issue requiring a vote of the Voting Members under this Declaration, the Bylaws, or the Articles.

6.6.3 Voting Groups. The Declarant may designate Voting Groups consisting of one or more Neighborhoods for the purpose of electing the Board, in order to promote representation on the Board for various groups having dissimilar interests and to avoid a situation in which the Voting Members representing similar Neighborhoods are able, due to the number of Memberships in such Neighborhoods, to elect the entire Board, excluding representation of others. Following termination of the Class B Memberships, the number of Voting Groups within SunCrest shall not exceed the total number of Board members to be elected by the Class A Members pursuant to the Bylaws. The Voting Members representing the Neighborhoods within each Voting Group shall vote on a separate slate of candidates for election to the Board, with each Voting Group being entitled to elect the number of Board members specified in the Bylaws.

6.6.3.1 The Declarant shall establish Voting Groups, if at all, not later than the date of termination of the Class B Memberships by filing with the Master Association and Recording in the land records of Salt Lake County, Utah and/or Utah County, Utah, as applicable, a Supplemental Declaration identifying the Neighborhoods within each Voting Group. Such designation may be amended from time to time by the Declarant, acting alone, at any time prior to the termination of the Class B Memberships by recording an amendment to the Supplemental Declaration.