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WHEN RECORDED MAIL TO:

W. Scott Kjar
C/O SKY Properties, Inc.
585 West 500 South, #110
Bountiful, UT 84010

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RICHARD T. MAUGHAN, DAVIS CNTY RECORDER
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REC'D FOR EDGEWOOD NSL DEVELOPMENT INC

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**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
EDGEWOOD ESTATES
(a Planned Unit Development)
(Expandable)**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF EDGEWOOD ESTATES ("Declaration") is executed this 16th day of July, 2003, by EDGEWOOD DEVELOPMENT, INC., a Utah corporation, (the "Declarant").

RECITALS:

- A. Capitalized terms in this Declaration are defined in Article I.
- B. Declarant has previously designed and recorded EDGEWOOD ESTATES PLANNED UNIT DEVELOPMENT PHASE 1 in the Official Records of the Davis County Recorder, State of Utah. Said phase is hereinafter referred to as Phase 1.
- C. Phase 1 comprises Park Parcel #1 and Park Parcel #2 (collectively the "Park Parcels") and Lot 1, Lot 2, Lot 3, and Lot 4 (collectively the "Phase 1 Lots").
- D. The Park Parcels are intended to be a part of the main entry to the Project and part of the Common Areas of Edgewood Estates Phases 2 through 5.
- E. The Declarant holds legal title to a certain tract of real property contiguous to Phase 1 and located in Davis County, Utah, which real property is more particularly described in Article II of this Declaration. Said real property is hereinafter referred to as the "Property". Declarant desires to develop the Property for residential townhouses.
- F. For purposes of development and marketing, the property described in Article II is intended to be known as "Edgewood Estates". In this Declaration the term "Property" shall refer to real property set forth on Exhibit "A" consisting initially of 12 Units and Common Areas as identified in Article I. It is expressly intended that the Project shall be expandable at the sole option of Declarant pursuant to U.C.A. § 57-8-10 in one or more phases as set forth herein. Declarant makes no representations, expressed or implied, regarding whether Declarant will undertake or complete any phase other than the Property described on the Plat Map(s). Declarant makes no further representations, expressed or implied, regarding the impact of any such future phases or any subsequent phases, or that any subsequent phases will be constructed substantially as shown on the proposed site plan for all of the proposed Edgewood residential community as depicted in Exhibit "C", which is attached hereto and incorporated herein by this reference.

G. Declarant intends to improve the Property by construction thereon of certain residential improvements and common facilities, and to establish thereon a Planned Unit Development residential subdivision, to be managed, operated, and maintained by an incorporated Association of Owners, for the benefit of the Property as a whole.

H. The development of the Property shall be hereinafter referred to as the "Project." The Owner of each of the Units shall receive fee title to their individual Lot and the Unit thereon, together with all rights associated with membership in the **EDGEWOOD ESTATES HOMEOWNERS ASSOCIATION, INC.** (the "Association").

I. Declarant intends by this document to impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of all of said Units and the Owners thereof. Declarant intends to establish a common scheme and plan for the possession, use, enjoyment, repair, maintenance, restoration and improvement of the Property and the interests therein conveyed and to establish thereon a Planned Unit Development consisting of single family residences in accordance with the terms hereof.

J. Declarant hereby declares that the Property shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold, and improved, subject to the following declarations, limitations, covenants, conditions, restrictions, and easements, all of which are for the purpose of enhancing and protecting the value and attractiveness of the Property, and the Project, and every part thereof, in accordance with the plan for the improvement, sale, and operation of the Property as a planned unit development. All of the limitations, covenants, conditions, restrictions, and easements shall constitute covenants and encumbrances which shall run with the land and shall be perpetually binding upon Declarant and its successors-in-interest and assigns, and all parties having or acquiring any right, title, or interest in or to any part of the Property or the Project.

NOW, THEREFORE, it is hereby declared that the Property shall be held, sold, conveyed, leased, rented, encumbered and used, subject to the following Declaration and its covenants, restrictions, limitations, and conditions, all of which shall constitute covenants which run with the land and shall be binding on and be for the benefit of the Declarant, its successors and assigns and all owners of all or any part of the Property, together with their respective grantees, successors, heirs, executors, administrators, devisees and assigns, all as set forth herein.

ARTICLE I. DEFINITIONS

When used in this Declaration (including in that portion hereof headed "Recitals") the following terms shall have the meaning indicated.

1. "**Articles**" or "**Articles of Incorporation**" shall mean and refer to the Articles of Incorporation of the Association which shall be filed with the Utah State Department of Commerce, Division of Corporations, and Commercial Code at or about the time this Declaration is recorded.

2. "**Association**" shall mean and refer to **EDGEWOOD ESTATES HOMEOWNERS ASSOCIATION, INC.**, a Utah non-profit corporation

3. "**Board of Trustees**" or "**Board**" shall mean and refer to the governing board of the Association which shall be appointed or elected in accordance with the Declaration, the Articles of Incorporation and Bylaws of the Association.

4. "**Building**" shall mean and refer to the residential structure (including garage and other improvements), each of which is composed of two (2) Units that share a common wall. Each Unit is located on a Lot in the Project and is designed and intended for use and occupancy as a residence by a single-family unit.

5. "**Building Exteriors**" shall mean and refer to those portions of the Buildings which are open to the elements such as roofs, soffit, facade, exterior walls, exterior doors, footings and foundations but excluding any window glass.

6. **"Bylaws"** shall mean the Bylaws of the Association as amended from time to time. The initial Bylaws shall be as adopted by the incorporating members of the Board of Trustees.

7. **"City"** shall mean the City of North Salt Lake, a Utah municipal corporation, the City in which the Project is located. As such the City which has primary jurisdiction over the Project.

8. **"Common Areas"** shall mean all the real property and improvements, now or hereafter constructed or located within the Property, other than the Lots and Buildings, including without limitation, all landscaped areas, detention basins, private roadways, walkways, and trail systems, within the Project, all of which shall be managed by the Association for the common use and enjoyment of all Owners. Common Areas shall also include: (a) the Park Parcels and (b) the storm drain system in the Project which is not situated within the dedicated roads. The foregoing notwithstanding, Common Areas shall not include public utility lines located within the Project. The individual Owners within Edgewood shall own the Common Areas as tenants in common, each with an equal undivided interest therein. The Common Areas are designated as such on the Plat Map(s), as defined below. Common Areas shall not include any portion of the Expansion Area until such time and upon such conditions as set forth by Declarant for annexation of the Expansion Area.

9. **"Common Expense Fund"** shall mean and refer to the fund created or to be created pursuant to the provisions of Article V of this Declaration and into which all monies of the Association shall be deposited. Two separate and distinct funds shall be created and maintained hereunder, one for operating expenses and one for capital expenses which together shall constitute the Common Expense Fund.

10. **"Common Expenses"** shall mean the actual and estimated expenses of maintenance, improvement, repair, operation, insurance, and management of the Common Areas and of the exterior and structural components of the Buildings, expenses of operating and maintaining the private roadway through the Project, expenses of administration of the Association, and any reasonable reserve for such purposes as determined by the Board, and all sums designated Common Expenses by or pursuant to the Project Documents. Without limiting the generality of the foregoing, Common Expenses shall also include: all commonly metered utility charges for the Property; the costs of trash collection and removal; compensation paid by the Association to managers, accountants, attorneys and other employees; the costs of all maintenance, gardening, security and other services benefitting the Common Areas; the costs of fire insurance, errors and omissions and director, officer and agent liability insurance, and other insurance covering the Property and the directors, officers and agents of the Association; and any other costs incurred by the Association pursuant to its authority for any reason whatsoever, for the common benefit of the Owners.

11. **"Declarant"** shall mean and refer to **EDGEWOOD DEVELOPMENT, INC.**, a Utah corporation and/or any successors thereof which, either by operation of law or through a voluntary conveyance, transfer or assignment, comes to stand in the same relation to the Property (or a portion thereof) as did its predecessor.

12. **"Declaration"** shall mean and refer to this DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF EDGEWOOD ESTATES, a Planned Unit Development as the same may hereafter be modified, amended and supplemented.

13. **"Eligible Mortgagee"** shall mean and refer to a First Mortgagee which has requested notice of certain matters from the Association in accordance with Section 1 of Article XI of this Declaration.

14. **"Expansion Area"** that real property identified on The Master Plan and known as the remainder of Phase 2 not included herein, and Phases 3, 4, and 5 upon which Declarant may elect, in its sole discretion, to expand the Project pursuant to Article 12.

15. **"First Mortgage"** shall mean any Mortgage which is not subject to any lien or encumbrance except liens for taxes or other liens which are given priority by statute.

16. **"First Mortgagee"** shall mean any person named as a Mortgagee under a First Mortgage, or any successor to the interest of any such person under a First Mortgage, which First Mortgage is not subject to any lien or encumbrance except liens for taxes or other liens which are given priority by statute.

17. **"Limited Common Areas"** shall mean any Common Areas designated as reserved for use by the Owner of a certain Unit or Units to the exclusion of the other Owners in the Project. Any areas and facilities that are identified on the Plat Map(s) as Limited Common Areas are permanently assigned to specific Units, as an appurtenance to such Units, for the exclusive use of such Units. The Plat Map(s) permanently designates the Unit or Units to which each of the Limited Common Areas is reserved and appurtenant.

18. **"Lot"** shall mean and refer to the separate parcel of residential real property which is identified on the Plat Map(s) created for the construction of a Unit. The term "Lot" does not include any Common Areas.

19. **"Manager"** shall mean and refer to the person, firm or company, if any, designated from time to time by the Association to manage, in whole or in part, the affairs of the Association and Project.

20. **"Master Plan"** shall mean the proposed site plan for all of the proposed Edgewood residential community as depicted in Exhibit "C", which is attached hereto and incorporated herein by this reference. Declarant makes no representations, expressed or implied, regarding whether Declarant will undertake or complete any phase other than Phase 2, Plat A, as designated on the Plat Map(s). Declarant makes no further representations, expressed or implied, regarding the impact of any such future phases or any subsequent phases, or that any subsequent phases will be constructed substantially as shown on the proposed Master Plan.

21. **"Member"** shall mean and refer to every person who holds membership in the Association.

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

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

24. **"Option to Expand"** shall mean Declarant's right to expand the Project as more fully set forth in Article XII.

25. **"Owner"** shall mean the person or persons, including the Declarant, owning in fee simple a Unit in the Project, as such ownership is shown by the records of the County Recorder of Davis County, State of Utah. The term "Owner" shall not refer to any Mortgagee (unless such Mortgagee has obtained title in fee simple to a Unit pursuant to a judicial or non-judicial action, including, without limitation, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure) or to any person or persons purchasing a Unit under contract (until such contract is fully performed and legal title conveyed of record).

26. **"Park Parcels"** shall mean, collectively, the lots designated as "Park Parcel #1" and "Park Parcel #2" of EDGEWOOD ESTATES PLANNED UNIT DEVELOPMENT PHASE 1. Declarant shall cause the Park Parcels to be conveyed to the Association.

27. **"Phase"** shall mean a particular parcel of property which is or shall become part of the Project pursuant to the recording of an appropriate amendment to the Declaration. As indicated in Paragraph E of the Recitals above, the term "Property" as used in this Declaration shall refer only to Phase 2, Plat A, unless and until the Option to Expand is elected by Declarant and is recorded with respect to such future phase according to the terms of this Declaration. Until such time, all phases other than Phase 2, Plat A, if any, shall be deemed unaffected and unencumbered by this Declaration.

28. "Plat Map(s)" shall mean the map or maps prepared by or for Declarant showing the surface of the Property and the division thereof into Lots and Common Areas, which map or maps shall be recorded in the office of the County Recorder of Davis County, Utah, which maps may be amended and/or supplemented from time to time. The Property will be developed in multiple phases. The first Phase of single family residential buildings is EDGEWOOD ESTATES PHASE 2, PLAT A, which shall consist of twelve units contained in six (6) separate Buildings. Each Building contains two (2) units sharing a common wall. Said units shall be collectively known as "Edgewood," as provided herein and identified on the Plat Map. Upon the election of Declarant, subsequent Phases may be added to this Declaration by amendment to this Declaration in accordance with Article 12.

29. "Project" shall mean and refer to the Property and the plan of development and ownership of the Property created and governed by this Declaration, the Articles and the Bylaws.

30. "Project Documents" shall mean, collectively, this Declaration, the Plat Map(s), and the Articles and Bylaws of the Association, as each may be amended from time to time.

31. "Property" shall mean and refer to the entire tract of real property now or hereafter covered by the Plat Map(s). A description of the real property covered by the Plat Map(s) on the effective date of this Declaration is set forth in Article II of this Declaration.

32. "Unit" shall mean and refer to the real property consisting of a portion of a Building sharing a common wall with the adjacent Unit and Lot attributable to each Unit as shown on the Plat Map(s). Except where the context specifically otherwise requires, reference to a Unit shall include reference to the Building thereon.

ARTICLE II. PROPERTY DESCRIPTION

1. The Property initially associated with the Project which is and shall be held, transferred, sold, conveyed, and occupied subject to the provisions easements and restrictions of this Declaration and the Plat Map(s) consists of the following described real property situated in Davis County, State of Utah:

See Exhibit "A", attached hereto

ARTICLE III. THE ASSOCIATION

1. Organization of Association. The Association is or shall be incorporated under the name of THE EDGEWOOD ESTATES HOME OWNERS ASSOCIATION, INC., in accordance with the requirements of the Utah Non-Profit Corporation and Co-operative Association Act.

2. Duties and Powers. The duties and powers of the Association are those set forth in this Declaration, the Articles and Bylaws, together with the general and implied powers of a nonprofit corporation, generally to do any and all things that a corporation organized under the laws of the State of Utah may lawfully do and which are necessary or proper in operating for the peace, health, comfort, safety and general welfare of its Members, subject only to the limitations upon the exercise of such powers as are expressly set forth in this Declaration, the Articles and Bylaws.

3. Membership. Each Owner shall be entitled and required to be a Member of the Association. Membership will begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner. If title to a Unit is held by more than one person, the membership appurtenant to that Unit shall be shared by all such persons in the same proportionate interest and by the same type of tenancy in which title to the Unit is held. An Owner shall be entitled to one membership for each Unit owned by such Owner. Each membership shall be appurtenant to the Unit to which it relates and shall be transferred automatically by conveyance of that Unit. Ownership of a Unit within the Project cannot be separated from membership in the Association

appurtenant thereto, and any devise, encumbrance, conveyance or other disposition of such Unit shall automatically constitute a devise, encumbrance, conveyance or other disposition of the Owner's membership in the Association and rights appurtenant thereto. No person or entity other than an Owner may be a Member of the Association and membership in the Association may not be transferred except in connection with the transfer of a Unit. The Association shall make available to the Owners, Mortgagees and the holders, insurers and guarantors of the First Mortgage on any Unit current copies of the Declaration, Articles, Bylaws and other rules governing the Project and other books, records and financial statements of the Association. The term "available" as used in this Section 1 shall mean available for inspection, upon request, during normal business hours or under other reasonable circumstances.

4. Board of Trustees. Until such time as the responsibility for electing the Board of Trustees of the Association is turned over to the Owners, the Declarant shall have the exclusive right to appoint and remove all such Trustees. This exclusive right of the Declarant to appoint the Trustees shall terminate upon the first to occur of the following:

- A. Four (4) years from the date on which the first Unit in the Project is conveyed; or
- B. One Hundred Twenty (120) days after 75% of the Units in the Project have been conveyed by Declarant.

5. Votes. Each Member shall be entitled to the number of votes appurtenant to his or her Unit, as set forth on **Exhibit "B"**, which is attached hereto and incorporated herein by this reference. The number of votes appurtenant to each Unit shall be permanent, and shall not change in the event an Owner modifies a Unit to increase or decrease the size of his Unit relative to other Units but may be changed pursuant to the provisions of article XII. In the event that there is more than one Owner of a particular Unit, the votes relating to such Unit shall be exercised as the Owners may determine among themselves. No Unit shall have more than the number of votes shown on **Exhibit "B"**, regardless of the number of persons having an ownership interest in the Unit. The votes cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the votes attributable to the Unit concerned unless an objection is immediately made by another Owner of the same Unit. In the event such an objection is made, the votes involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists. The Declarant shall have full voting rights with respect to each Unit which it owns. Notwithstanding any of the foregoing, so long as the Declarant controls appointment of the Board of Trustees as set forth in Article III, Section 2, above the Declarant shall have ten (10) votes for each vote set forth on **Exhibit "B"** appurtenant to any Unit held by Declarant.

6. Maintenance of Building Exteriors and Common Areas. It is intended by the Declaration that the Buildings and the Common Areas shall present a uniform, neat and well-cared-for appearance. To achieve this stated purpose, the Association shall maintain all Building Exteriors as follows: paint, stain, repair, replacement and care of roofs, gutters, downspouts, fences, exterior building surfaces, exterior doors and other exterior fixtures and improvements. Such maintenance shall not include repair or replacement of window glass on any Building or utility lines from the point that they begin to serve exclusively any one Unit. The Association shall also prepare, improve, install and shall maintain all landscaping, trees, shrubs, grass, walks and steps located within the Project. The Association shall have the right of entry to any Unit to perform emergency repairs or do other work necessary for maintenance of the Building Exteriors.

In the event that the need for maintenance or repair of the Building Exteriors or Common Areas is caused through the willful or negligent acts of its Owner(s), or through the willful or negligent acts of the guests, tenants or invitees of the Owner(s) of the Unit needing such maintenance or repair, the cost of such exterior maintenance shall be immediately due and payable from such Owner and added to and become a part of the assessment to which such Unit is subject.

7. Professional Management. The Association may carry out, through a Manager, those of its functions which are properly the subject of delegation. The Manager so engaged shall be an independent contractor and not an agent or employee of the Association, shall be responsible for managing the Project for the benefit of the Association

and the Owners, and shall, to the extent permitted by law and by the terms of the management agreement with the Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Association itself. Any such management agreement executed on or before the termination of Declarant's control of the appointment of the Board of Trustees as described in Section 2 of Article III may be terminated by the Association without cause at any time after termination of Declarant's control. The above term and termination provisions shall not apply to any other types of service contracts.

8 Amplification. The provisions of Section 5 may be amplified by the Articles and the Bylaws; provided, however, that no such amplification shall substantially alter or amend any of the rights or obligations of the Owners set forth in this Declaration.

ARTICLE IV. PROPERTY RIGHTS IN COMMON AREAS AND UNITS

1. Description of Buildings and Units. Each Building shall be a detached, single story residence of wood frame construction, erected on concrete slab with composition roof and attached garage and driveway. Each Unit shall be separately metered and wired for electricity. Water, both culinary and secondary for irrigation, may be metered in common with all other Units in the Projects. Each Unit shall be connected to a public sewage disposal system. A more detailed description of the Units may be found on the Plat Map(s). Revised Unit descriptions may be contained in subsequent plats or amendments.

2. Easement of Enjoyment. Each Member shall have an undivided interest, right and easement of use and enjoyment in and to the Common Areas. Each Owner shall have an unrestricted right of ingress or egress to and from its Unit over and across such Common Areas. Each Owner shall also have the exclusive right to use and enjoy any Limited Common Areas that may be designated on the Plat Map(s) for exclusive use by such Owner or as may be designated by the Association. Such rights and easements shall be appurtenant to and shall pass with title to each Unit and in no event shall be separated therefrom. Any Member may delegate the right and easement of use and enjoyment described herein to any guest, invitee, tenant, lessee, contract purchaser, or other person who occupies or utilizes such Member's Unit.

3. Easements for Encroachments. It is intended that one wall of each Building shall be located at or on the property line as shown on the Plat Map(s). In the event the construction, reconstruction, repair, shifting, settlement or any other movement of any portion of the improvements causes any part of a Unit built in substantial accord with the boundaries for such Unit as depicted on the Plat Map(s) to encroach upon the Common Areas, or upon an adjoining Unit, or if any part of the Common Areas encroaches or shall encroach upon a Unit for any such reasons, an easement for such encroachment and for the maintenance of the same shall and does hereby exist. There is also hereby created an easement for any encroachment by any footing, foundations, roof overhang or other architectural appurtenances upon an adjoining Unit or any part of the Common Areas.

4. Limitation on Easement. A Member's equal, undivided interest, right and easement of use and enjoyment concerning the Common Areas shall be subject to the following:

A. The right of the Association to suspend a Member's voting right in the Association upon notice and a chance for hearing for any period during which (i) an assessment on such Member's Unit remains unpaid; (ii) for a period not exceeding sixty (60) days for any infraction by such Member of the provisions of this Declaration or of any rule or regulation promulgated by the Association; and (iii) for successive 60-day periods if any such infraction is not corrected during any prior 60-day suspension period;

B. The right of the Association to (i) impose reasonable limitations on the number of guests per Member who at any given time are permitted to use the Common Areas; and (ii) allocate and/or assign specific parking spaces as may be available to each Owner based on the assessment percentages set forth in **Exhibit "B"** as may be reasonably necessary.

C. The right of the City, Davis County, the State of Utah or any other governmental or quasi-governmental body having jurisdiction over the Property, to ingress and egress over and across any street, parking area, walkway, or open area contained within the Property for purposes of providing police and fire protection and providing other governmental or municipal service;

D. The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Association. No such dedication or transfer shall be effective unless an instrument signed by Members holding sixty-seven percent (67%) or more of the total votes of the Association agreeing to such dedication or transfer has been recorded, except that the Board shall have authority to transfer to such public agencies, authorities or utilities, permits, licenses, easements and rights-of-way which are intended to benefit and which do not have any substantial adverse effect on the use or enjoyment of the Common Areas by the Members.

6. Form for Conveyancing. Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering title to a Unit may describe the interest or estate involved substantially as follows:

Lot No _____ of EDGEWOOD ESTATES PHASE __, PLAT __, a Planned Unit Development, according to the Record of Survey Map filed for record as Entry No. _____ in Book _____ of Plats at Page _____, together with the appurtenant undivided ownership interest in the "Common Areas", all of which are defined and described in the DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF EDGEWOOD ESTATES. and the Exhibits attached thereto, filed for record as Entry No. _____ in Book _____ at Pages _____ through _____, of Official Records.

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

7. Transfer of Title. The Declarant agrees to cause the conveyance of the Common Areas to the Members of Association as tenants in common with an equal undivided interest therein. No Owner, shall bring any action for partition or division of any part of the Common Areas, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation, management, use, and enjoyment of the Common Areas.

ARTICLE V. ASSESSMENTS

1. Agreement to Pay Assessments. Each Owner of any Unit, by the acceptance of instruments of conveyance and transfer therefor, whether or not it is expressed in said instruments, shall be deemed to covenant and agree with each other and with the Association to pay to the Association all assessments made by the Association for the purposes provided in this Declaration. Such assessments shall be fixed, established and collected from time to time as provided in this Article V. In any event, all Units shall be allocated the then applicable assessments upon conveyance of the first Unit.

A. Until January 1 of the year immediately following the conveyance of the first Unit to an Owner, the annual assessment shall be not greater than \$125.00 per month.

B. From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment may be increased each year by up to fifteen percent (15%) above the maximum assessment for the previous year without a vote of the membership.

C. From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the annual assessment may be increased fifteen percent (15%) over the prior year's assessment

only by a vote of at least sixty-seven percent (67%) of the votes (determined in accordance with Section 3 of Article III) of Members who are voting in person or by proxy, at a meeting duly called for this purpose.

D. The Board may fix the annual assessment at an amount not in excess of the maximum annual assessment set forth in Section 1.C, above, without a vote of the Members.

2. Annual Assessments. Annual assessments shall be computed and assessed against all Units in the Project as follows:

A. Common Expense. Annual assessments shall be based upon advance estimates of the Association's cash requirements to provide for payment of all estimated expenses arising out of or connected with the maintenance and operation of the Common Areas, the Building Exteriors, and furnishing common utility services and other common items to the Units. Such estimated expenses may include, without limitation, the following: expenses of management; real property taxes and special assessments on the Common Areas (and the Units until the Units are separately assessed); premiums for all insurance that the Association is required or permitted to maintain hereunder; repairs, maintenance and cleaning of the Common Areas and Building Exteriors; landscaping of Common Areas; snow removal, wages of Association employees, fees for a Manager; trash removal from Common Areas; utility charges, including charges for utility services to the Units to the extent not separately metered or billed; legal and accounting fees; any deficit remaining from a previous period; creation of an adequate contingency reserve, major maintenance reserve and/or sinking fund; creation of an adequate reserve fund for maintenance repairs, and replacement of those Common Areas and Building Exteriors that must be replaced on a periodic basis; and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under or by reason of this Declaration. The aggregate of all such items shall constitute the Common Expenses, and all funds received from assessments under this Section 2.A shall be part of the Common Expense Fund. Two separate and distinct funds shall be created and maintained hereunder, one for operating expenses and one for capital expenses which together shall constitute the Common Expense Fund.

B. Apportionment. Common Expenses shall be apportioned among and assessed to all Units and their Owners, as set forth on Exhibit "B", which is attached hereto and incorporated herein by this reference. The Declarant shall be liable for the amount of any assessments against Units owned by it as provided herein, and as limited in subsection 3 and 4 below.

C. Annual Budget. Annual assessments shall be determined on the basis of a fiscal year beginning January 1st and ending on the following December 31st, provided the first fiscal year shall begin on the date of the conveyance of the first Unit by Declarant. On or before December 1st of each year thereafter, the Board of Trustees shall prepare and furnish to each Owner, or cause to be prepared and furnished to each Owner, an operating budget for the upcoming fiscal year. The budget shall itemize the estimated Common Expenses for such fiscal year, anticipated receipts (if any) and any deficit or surplus from the prior operating period. The budget shall serve as the supporting document for the annual assessment for the upcoming fiscal year and as the major guideline under which the Project shall be operated during such annual period.

D. Notice and Payment. Except with respect to the first fiscal year, the Board of Trustees shall notify each Owner in writing as to the amount of the annual assessment against his or her Unit on or before December 15th each year for the fiscal year beginning on the following January 1st. Except as otherwise provided by the Board, each annual assessment shall be payable in twelve equal monthly installments, one such installment due on the first day of each calendar month during the fiscal year to which the assessment relates; provided, however, the annual assessment for the first fiscal year shall be based upon such portion of the first fiscal year. All unpaid installments of any annual assessment shall bear interest at the rate established by the Board not to exceed eighteen percent (18%) per annum from fifteen (15) days after the date each such installment became due until paid. The Board of Trustees shall also have the right to assess a late fee of up to ten percent (10%) of any assessment installment not paid within ten (10) days following the due date thereof.

In addition, in the event any installment of the annual assessment is not paid within fifteen (15) days of the date such an installment becomes due, the Association may, at its option, and upon fifteen (15) days prior written notice to the Owner, accelerate the due date for all remaining unpaid installments of the annual assessment for the remainder of the fiscal year and all accrued but unpaid interest thereon. Payment of the annual assessment installments so accelerated shall be due at the expiration of said fifteen (15) day notice period and interest shall accrue on the entire sum at the rate established by the Board not to exceed eighteen percent (18%) per annum from such date until paid in full. The failure of the Board of Trustees to give timely notice of any annual assessment as provided herein shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of Owner from the obligation to pay such assessment or any other assessment.

E. Inadequate Funds. In the event that the Common Expense Fund proves inadequate at any time for whatever reason, including nonpayment of any Owner's assessment, the Board of Trustees may, on behalf of the Association, levy additional assessments in accordance with the procedure set forth in Article V Section 3 below, except that the required vote set forth therein shall be by at least fifty percent (50%) of the voting power of the Association in person or by proxy at a meeting called for such purpose. Notwithstanding the foregoing, the Association may levy an additional assessment without a vote of the Owners so long as such additional assessment is only to cover the cost of utility rate increases which take effect after the annual budget is prepared.

3. Special Assessments. In addition to the annual assessments authorized by this Article, the Board of Trustees may, on behalf of the Association, levy, at any time and from time to time, upon the affirmative vote of at least sixty-seven percent (67%) of the voting power of the Association in person or by proxy at a meeting called for such purpose, special assessments, payable over such periods as the Board of Trustees may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Project or any part thereof, or for any other expenses incurred or to be incurred as provided in this Declaration (including, without limitation, Common Expenses). This Section shall not be construed as an independent source of authority for the Association to incur expenses but shall be construed to prescribe the manner of assessing for expenses authorized by other Sections or Articles hereof. Any amounts assessed pursuant hereto shall be assessed to Owners in accordance with the assessment percentages allocated to each Unit as set forth on Exhibit "B." Notice in writing of the amount of each such special assessment and the time for payment thereof shall be given promptly to the Owners; no payment shall be due less than fifteen (15) days after such notice shall have been given. All unpaid portions of any special assessment shall bear interest at the rate established by the Board not to exceed eighteen percent (18%) per annum from the date such portions become due until paid. All funds received from assessments under this Section shall be part of the Common Expense Fund. In connection with any such special assessment, if the Declarant is only obligated to pay twenty-five percent (25%) of the annual assessment attributable to Units it owns pursuant to Section 4 below, it shall only be required to pay twenty-five (25%) of the special assessment otherwise attributable to each such Unit. The provisions of this Section are not intended to preclude the assessment, collection or use of annual assessment for the aforesaid purposes.

4. Uniform Rate of Assessment. The amount of any annual or special assessment against each Unit shall be fixed at a uniform rate based on the number of votes allocated to each Unit, as set forth on Exhibit "B." Notwithstanding the foregoing, until the termination of Declarant's control of the appointment of the Board of Trustees as described in Section 2 of Article III, Declarant shall pay only twenty-five percent (25%) of the annual assessment attributable to each completed Unit which it owns until the conveyance by Declarant of such Unit to a third-party purchaser. At such time as Declarant ceases to qualify for the reduced twenty-five percent (25%) rate during any period to which an annual assessment is attributable, the assessment attributable to the membership shall be prorated between the applicable rates on the basis of the number of days in the period that the Declarant qualified for each rate. Annual assessments may be collected on a monthly basis and special assessments may be collected as specified by the Board unless otherwise determined by the resolution of the Members of the Association approving the special assessment.

5. Notice and Quorum for Any Action Authorized Under Sections 1 and 3. Written notice of any meeting called for the purpose of taking any action authorized under Sections 1 or 3 of this Article shall be sent to all Members no less than ten (10) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes (exclusive of suspended voting rights) of Members shall constitute a quorum. If the required quorum is not present, the meeting may be adjourned and the notice requirement of this section shall not apply. The required quorum at the subsequent meeting shall be sixty percent (60%) of the required quorum at the preceding meeting. No such adjourned meeting shall be held more than sixty (60) days following the preceding meeting.

6. Lien for Assessments. All sums assessed to Owners of any Unit within the Project pursuant the provisions of this Article V, together with penalties and interest thereon as provided herein, shall be secured by a lien on such Unit in favor of the Association. To evidence a lien for sums assessed pursuant to this Article V, the Board of Trustees may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the Unit and a description of the Unit. Such notice shall be signed and acknowledged by a duly authorized officer of the Association or agent and may be recorded in the office of the County Recorder of Davis County, State of Utah. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by sale or foreclosure conducted in accordance with the provisions of law applicable to the exercise of powers of sale or judicial foreclosure of deeds of trust or mortgages or in any other manner permitted by law. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees), and such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any assessment against the Unit which shall become due during the period of foreclosure, and all such assessments shall be secured by the lien being foreclosed. The Board of Trustees shall have the right and power in behalf of the Association to bid in at any foreclosure sale and to hold, lease, mortgage or convey the subject Unit in the name of the Association.

7. Personal Obligation of Owner. The amount of any annual or special assessment against any Unit shall be the personal obligation of the Owner of such Unit to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the Common Areas or by abandonment of his Unit or by waiving any services or amenities provided for in this Declaration. In the event of any suit to recover a money judgment of unpaid assessment hereunder, the involved Owner shall pay the costs and expenses incurred by the Association in connection therewith, including reasonable attorneys' fees.

8. Personal Liability of Purchaser. The personal obligation of an Owner to pay unpaid assessments levied against his Unit as described in Section 7 of this Article V shall not pass to successors in title but shall remain the personal obligation of the owner. A lien to secure unpaid assessments shall not be affected by the sale or transfer of the Unit except for foreclosure by a First Mortgagee, in which case the foreclosure will extinguish the lien for any assessments that were payable before the foreclosure sale, but shall not relieve any subsequent Owner from paying further assessments.

9. Reserves and Working Capital. In addition to its day-to-day operating funds, the Association shall establish the following funds:

A. Reserve Fund. The Association may in its sole discretion establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Areas and Building Exteriors the Association is obligated to maintain, repair or replace. The reserve fund shall be maintained out of regular assessments for Common Expenses.

B. Working Capital Fund. The Declarant shall establish and maintain for the Project, a working capital fund equal to at least two monthly installments of the annual assessment of each Unit. Each Unit's share of the working capital fund must be collected and transferred to the Association at the time of the closing of sale of that Unit. Notwithstanding the foregoing, the contribution to the working capital fund for each unsold Unit

shall be paid by the Declarant to the Association within one hundred twenty (120) days after the latter of the date of the conveyance of the first Unit in the Project or completion of the construction of the Unit. With respect to each Unit for which the Declarant pays the contribution to the working capital fund, Declarant shall be reimbursed for such contribution either by the purchaser of such Unit at the time of the closing of the sale to such purchaser or by the Association upon termination of the Declarant's control of the Association as described in Section 2 of Article III hereof, whichever is earlier. The working capital fund must be maintained in a segregated account for the use and benefit of the Association. The purpose of the working capital fund is to ensure that the Association will have cash available to meet initial operating expenses and unforeseen expenditures or to acquire additional equipment or services deemed necessary or desirable by the Association. Amounts paid into the working capital fund are not to be considered advance payments of any regular assessment. The working capital fund shall be transferred to the Association for deposit to a segregated fund when control of the Association is transferred to the Owners. The Declarant shall not use the working capital fund to defray any of its expenses, reserve contributions, or construction costs or to make up any budget deficits while it is in control of the Association.

10. Evidence of Payment of Annual and Special Assessments. Upon receipt of a written request by a Member or any other person, the Association, within a reasonable period of time thereafter, shall issue to such Member or other person a written certificate stating (a) that all annual and special assessments (including interest, costs and attorneys' fees, if any, as provided in Section 2 above) have been paid with respect to any specified Unit as of the date of such certificate, or (b) if all annual and special assessments have not been paid, the amount of such annual and special assessments (including interest, costs and attorneys' fees, if any) due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificates, which charges must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matter therein stated as against any bona fide purchaser of, or Mortgagee on, the Unit in question.

ARTICLE VI. OPERATION AND MAINTENANCE

1. Maintenance of Units. Each Unit shall be maintained by the Owner thereof so as not to detract from the appearance of the Property and so as not to affect adversely the value or use of any other Unit. The Association shall have no obligation regarding maintenance or care of any Unit except as expressly set forth in Section 4 of Article III, Section 2 of this Article VI or elsewhere in this Declaration. Each Owner is responsible to both landscape and maintain the backyard of their Lot (from the fence at or near the front corner of the Building to the back wall or fence of the Lot). Installation of all landscaping in each Owner's backyard must be completed within one (1) year of occupancy of the corresponding Unit. Each Owner shall be required to connect to the irrigation (secondary) system for landscaping in the backyard of each Unit. Culinary water shall not be used for irrigation purposes. Upon the transfer and/or sale of each Lot, the Declarant transfers all responsibility for both landscaping and maintenance of the backyard of each Unit to the Owner thereof.

2. Operation and Maintenance by Association. The Association shall provide for such maintenance and operation of the Common Areas as may be necessary or desirable to make them appropriately usable in conjunction with the Units and to keep them clean, functional, attractive and generally in good condition and repair. The Association shall also provide for the maintenance of all Building Exteriors and shall install and maintain all landscaping, trees, shrubs, grass, walks and steps located in the Common Areas. Each Owner will be responsible for all landscaping of its Limited Common Areas. The expenses incurred by the Association for such purposes shall be paid for with funds from the Common Expense Fund. Notwithstanding the foregoing, the Association shall not be responsible for snow removal from the driveway or walkways of any Unit.

All fencing within the Project shall initially be installed by Declarant. Irrigation water shall be provided through an irrigation system to be installed by Declarant. Each Unit will have a stubbed connection provided. The Association shall be responsible for the continual upkeep, repair, maintenance, and eventual replacement of the irrigation system, except in the Limited Common Areas.

3. Utilities. The Owner shall pay for all utility services furnished to each Unit including a pro-rata share of all utility services which are not separately billed or metered to individual Units by the utility or other party furnishing such service. The Association shall pay such bills which are not separately metered (either directly or through membership in an association created for the purpose of administering such common utilities for one or more related developments) and charge an appropriate share to each Unit and Owner as part of the Common Expenses.

The Association may, in its discretion, undertake to meter each Unit individually for any common utilities, whether privately or through a municipal utility. In such event, the Unit Owner shall pay the actual costs of such utility services attributable to such Owner's Unit.

4. Insurance. The Association shall at all times maintain in force insurance meeting the following requirements:

A. Hazard Insurance. A "master" or "blanket" type policy of property insurance shall be maintained covering the Common Areas of the Project; but excluding land, foundations, excavations, and other items normally not covered by such policies. References herein to a "master" or "blanket" type policy of property insurance are intended to denote single entity insurance coverage. As a minimum, such "master" or "blanket" policy shall afford protection against loss or damage by fire, by other perils normally covered by the standard extended coverage endorsement, and by all other perils which are customarily covered with respect to projects similar to the Project in construction, location, and use, including (without limitation) all perils normally covered by the standard "all risk" endorsement, where such endorsement is available. Such "master" or "blanket" policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all elements of the Common Areas covered by such policy, exclusive of land, foundations, excavation, and other items normally excluded from coverage. The insurance policy shall include either of the following endorsements to assure full insurable value replacement cost coverage: (1) a Guaranteed Replacement Cost Endorsement (under which the insurer agrees to replace the insurable property regardless of the cost) and, if the policy includes a co-insurance clause, an Agreed Amount Endorsement (which waives the requirement for co-insurance); or (2) a Replacement Cost Endorsement (under which the insurer agrees to pay up to one-hundred percent of the property's insurable replacement cost but no more) and, if the policy includes a co-insurance clause, an Agreed Amount Endorsement (which waives the requirement for co-insurance). The maximum deductible amount for such policy covering the Common Areas shall be the lesser of Ten Thousand Dollars (\$10,000) or one percent (1%) of the policy face amount.

B. Flood Insurance. If any part of the Project is or comes to be situated in a Special Flood Hazard Area as designated on a Flood Insurance Rate Map, a "master" or "blanket" policy of flood insurance shall be maintained covering the Common Areas within the Project (hereinafter "**Insurable Property**") in an amount deemed appropriate, but not less than the lesser of: (1) the maximum limit of coverage available under the National Flood Insurance Administration Program for all Common Areas within the Project located within a designated flood hazard area; or (2) one hundred percent (100%) of the insurable value of all such facilities. The maximum deductible amount for any such policy shall be the lesser of Five Thousand Dollars (\$5,000.00) or one percent (1%) of the policy face amount.

C. Fidelity Bonds. The Association shall at all times maintain in force and pay the premiums for "blanket" fidelity bonds for all officers, members, and employees of the Association and for all other persons handling or responsible for funds of or administered by the Association whether or not that individual receives compensation for services. Furthermore, where the Association has delegated some or all of the responsibility for the handling of funds to a Manager, the Manager shall provide "blanket" fidelity bonds, with coverage identical to such bonds required of the Association, for the Manager's officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association. The total amount of fidelity bond coverage required shall be based upon the Association's best business judgment and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association, or the Manager, as the case may be, at any given time during the term of each bond. A lesser amount of fidelity insurance

coverage is acceptable for the Project so long as the Association and the Manager adhere to the following financial controls: (1) the Association or the Manager maintains separate bank accounts for the working account and the reserve account, each with appropriate access controls, and the bank in which funds are deposited sends copies of the monthly bank statements directly to the Association; (2) the Manager maintains separate records and bank accounts for each Association that uses its services and the Manager does not have authority to draw checks on or to transfer funds from the Association's reserve account; or (3) two members of the Board must sign any checks written on the reserve account. Nevertheless, in no event may the amount of such bonds be less than the sum equal to three months' aggregate assessments on all Units. The bonds required shall meet the following additional requirements: (1) the fidelity bonds shall name the Association as obligee; (2) the bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions; (3) the premiums on all bonds required herein for the Association (except for premiums on fidelity bonds maintained by the Manager for its officers, employees and agents) shall be paid by the Association as part of the Common Expenses; and (4) the bonds shall provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days' prior written notice to the Association and to any Insurance Trustee. The requirements of this Section C may be satisfied by naming the Association and its officers, members and employees as "also insureds" under the Managers Fidelity Bond and otherwise meeting the foregoing requirements.

D. Liability Insurance. The Association shall maintain in force, and pay the premium for a policy providing comprehensive general liability insurance coverage covering all of the Common Areas, Building Exteriors, public ways in the Project, including any dedicated trail system(s), all other areas of the Project that are under the Association's supervision, and commercial spaces owned by the Association, if any, whether or not such spaces are leased to some third party. The coverage limits under such policy shall be in amounts generally required by private institutional Mortgage investors for projects similar to the Project in construction, location, and use. Nevertheless, such coverage shall be for at least One Million Dollars (\$1,000,000) for bodily injury, including deaths of persons, and property damage arising out of a single occurrence. Coverage under such policy shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance, or use of the Common Areas, and/or Building Exteriors, and legal liability arising out of lawsuits related to employment contracts of the Association. Additional coverages under such policy shall include protection against such other risks as are customarily covered with respect to projects similar to the Project in construction, location, and use, including but not limited to (where economically feasible and if available), host liquor liability, contractual and all-written contract insurance, employers liability insurance, and comprehensive automobile liability insurance. If such policy does not include "severability of interest" in the terms, the policy shall include a special endorsement to preclude an insurer's denial of any Owner's claim because of negligent acts of the Association or any other Owner. Such policy shall provide that it may not be canceled or substantially modified, by any party, without at least ten (10) days' prior written notice to the Association and to each Mortgagee which is listed as a scheduled holder of a Mortgage in such policy.

E. Insurance Trustees and General Requirements Concerning Insurance. Notwithstanding any of the foregoing provisions and requirements relating to property or liability insurance, there may be named as an insured on behalf of the Association, the Association's authorized representative, including any trustee with whom the Association may enter into any Insurance Trust Agreement or any successor to such trustee (each of whom shall be referred to herein as the "Insurance Trustee"), who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance. Each Owner hereby appoints the Association, or any Insurance Trustee or substitute Insurance Trustee designated by the Association, as his or her attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association, or any Insurance Trustee, shall receive, hold, or otherwise properly dispose of any proceeds of insurance in trust for the use and benefit of the Owners and their Mortgagees, as their interests may appear.

Each insurance policy maintained pursuant to the foregoing Sections, A, B, C, and D shall be written by an insurance carrier which is licensed to transact business in the State of Utah and which has a B general policyholder's rating or a financial performance index of 6 or better in the Best's Key Rating Guide or an A or better rating from Demotech, Inc., or which is written by Lloyd's of London. No such policy shall be maintained where: (1) under the terms of the carrier's charter, bylaws, or policy, contributions may be required from, or assessments may be made against, an Owner, a Mortgagee, the Board, or the Association; (2) by the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's board of Trustees, policyholders, or members; or (3) the policy includes any limiting clauses (other than insurance conditions) which could prevent the party entitled (including, without limitation, the Board, the Association, or an Owner) from collecting insurance proceeds. The provisions of this Section E and of the foregoing sections A, B, C and D shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage, in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Association may deem appropriate from time to time.

F. Annual Review of Policies. All insurance policies shall be reviewed at least annually by the Board in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacement of the Project which may have been damaged or destroyed. In addition, such policies shall be reviewed to determine their compliance with the provisions of this Declaration.

G. Right and Duty of Owners to Insure. It is the responsibility of each Owner to provide hazard, fire, general liability and all other insurance on its Unit and all personal property and upon all other property and improvements on or within its Unit. Such policies shall not adversely affect or diminish any liability under any insurance obtained by or on behalf of the Association, and duplicate copies of such other policies shall be deposited with the Board upon request. If any loss intended to be covered by insurance carried by or on behalf of the Association shall occur and the proceeds payable thereunder shall be reduced by reason of insurance carried by any Owner, such Owner shall assign the proceeds of such insurance carried by him to the Association to the extent of such reduction, for application by the Board to the same purposes as the reduced proceeds are to be applied.

ARTICLE VII. DAMAGE OR DESTRUCTION

1. Damage to Common Areas. Except as otherwise provided in this Declaration, in the event of any destruction of any portion of the Common Areas, the repair or replacement of which is the responsibility of the Association, it shall be the duty of the Association to restore and repair the same to its former condition, as promptly as practical. The proceeds of any insurance maintained pursuant to Article VI hereof for reconstruction or repair of the Property shall be used for such purpose, unless otherwise provided herein. The Board shall be authorized to have prepared the necessary documents to effect such reconstruction as promptly as practicable. The Property shall be reconstructed or rebuilt substantially in accordance with the original construction plans. If the amount available from the proceeds of such insurance policies for such restoration and repair is inadequate to complete the restoration and repair, the Board shall levy a Special Assessment for the deficiency and proceed with such restoration and repair.

2. Damage to Buildings. Except as otherwise provided in this Declaration, in the event of any destruction of any Building(s), it shall be the duty of the Owner(s) of the Building(s) to restore and repair the same to its/their former condition, as promptly as practical, under the supervision of the Board. The proceeds of any insurance maintained pursuant to Article VI hereof for reconstruction or repair of the Property shall be made available for such purpose, unless otherwise provided herein. The Building(s) shall be reconstructed or rebuilt substantially in accordance with the original construction plans. If the amount available from the proceeds of such insurance policies for such restoration and repair is less than the estimated cost of restoration and repair, the Owner(s) of the Building(s) shall be responsible for the deficiency, and the Board shall have the power to levy a Special Assessment to secure payment of the deficiency. In the event more than one Building is damaged or destroyed, the available insurance proceeds shall be allocated according to the estimated costs of repair and restoration of each Building.

3. Alternate Plans for Restoration and Repair. Notwithstanding the provisions of Section 1 and 2, the Association shall have the right, by a vote of seventy-five percent (75 %) of the Association, to make alternate arrangements respecting the repair, restoration or demolition of the damaged portion of the Property. The alternate plan may provide for special allocation of insurance proceeds, modification of design, or special allocation of any necessary Assessments. Any plan adopted pursuant to this subparagraph shall be adopted within sixty (60) days of the damage or destruction and shall be supported by the vote of any Owner whose Building has been physically damaged, to the extent the proposed plan affects the reconstruction of such Building.

4. Appraisal of Damages. In the event the parties affected by damage or destruction to the Property cannot agree, within twenty (20) days of the date of the damage, on the estimated cost of repair or the allocations referred to in this Article VII the Association shall appoint three (3) independent appraisers having at least five (5) years full-time appraisal experience in Davis County, Utah, to appraise the damage and establish allocations among various damaged portions of the Property. Within forty-five (45) days after the selection of the appraisers, a majority of the appraisers shall set the estimated cost of repairs and allocations. If a majority of the appraisers are unable to agree within the stipulated period of time, the average of the three (3) appraisals shall be utilized. If, however, the low appraisal and/or the high appraisal are/is more than fifteen percent (15%) lower and/or higher than the middle appraisal, the low appraisal and/or the high appraisal shall be disregarded. If only one appraisal is disregarded, the average of the two remaining appraisals shall be utilized. If both the low appraisal and the high appraisal are disregarded, the middle appraisal shall be utilized. The cost of the appraisals required by this subparagraph shall be paid by the Association and reimbursed by the Owners through an Extraordinary Assessment.

5. Interior Damage. With the exception of any casualty or damage insured against by the Association pursuant to Article VI of this Declaration, restoration and repair of any other damage to the exterior or interior of any individual Building, including without limitation all fixtures, cabinets and improvements therein, together with restoration and repair of all interior paint, wall coverings and floor coverings, and personal property shall be made by and at the individual expense of the Owner of the Building so damaged. In the event of a determination to rebuild the Property after partial or total destruction as provided in this Declaration, such repair and restoration shall be completed as promptly as practical and in a lawful and workmanlike manner, in accordance with plans approved by the Architectural Committee as provided herein.

6. Damage by Member(s). Each Member shall be liable to the Association for any damage to the Common Areas or the Buildings if the damage is sustained because of the negligence or willful misconduct of the Member, his guests, tenants, or invitees, or any other persons deriving their right and easement of use and enjoyment of the Common Areas or the Building from the Member, or his or their respective family and guests, both minor and adult. The Association shall first look to the Member for compensation for such damage, and next to any insurance carried by the Member. However, the Association, acting through the Board, reserves the right to determine whether any claim shall be made upon the insurance maintained by the Association, and the Association further reserves the right to levy a Special Assessment equal to the increase, if any, in insurance premiums directly attributable to the damage caused by the Member or the person for whom the Member may be liable as described above. The cost of correcting the damage to the extent not reimbursed to the Association by insurance or paid to the Association by the Member shall be a Special Assessment against the Unit of the Member liable for the damage and may be enforced as provided hereby for the enforcement of any other Assessment.

ARTICLE VIII. CONDEMNATION

1. Condemnation. If at any time or times all or any part of the Project shall be taken or condemned by any public authority under power of eminent domain, the provisions of this article shall apply. A voluntary sale or conveyance of all or any part of the Project in lieu of condemnation, but under threat of condemnation, shall be deemed to be a taking by power of eminent domain. If any Unit or portion thereof or the Common Areas or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, the Board of Trustees shall give prompt written notice of any such proceeding or proposed

acquisition to each Owner in the Project and to any First Mortgagee who has requested in writing notice thereof. The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Areas, or any part thereof, and each Owner hereby appoints the Association as such Owner's attorney-in-fact for the purposes of such representation.

2. Proceeds. All compensation, damages and other proceeds from any such taking by power of eminent domain (hereinafter "**Condemnation Award**") shall be made payable to the Association and shall be distributed by the Board of Trustees, on behalf of the Association as herein provided.

3. Complete Taking. In the event the entire Project is taken by power of eminent domain, ownership pursuant hereto shall terminate and the Condemnation Award shall be allocated among and distributed to the Owners and the Owners shall divide the Condemnation Award based upon the relative values of the Units immediately prior to the condemnation. Such distribution shall be made by check payable jointly to the respective Owners and their respective Mortgagees, as appropriate.

4. Partial Taking. In the event less than the entire Project is taken by power of eminent domain, the following shall occur:

A. Allocation of Award. As soon as practicable, the Board of Trustees shall, on behalf of the Association, reasonably and in good faith, apportion the Condemnation Award between compensation, severance damages or other proceeds and shall allocate such apportioned amounts and pay the same to the Owners as follows:

(i) The total amount apportioned to the taking of or injury to the Common Areas shall be allocated among and distributed to all Owners (including Owners whose entire Units have been taken).

(ii) The total amount apportioned to severance damages shall be allocated among and distributed equally to the Owners of those Units that have not been taken.

(iii) The respective amounts apportioned to the taking of or injury to a particular Unit shall be allocated and distributed to the Owner of such Unit.

(iv) The total amount apportioned to consequential damages and any other taking or injuries shall be allocated and distributed as the Association determines to be equitable under the circumstances;

(v) If apportionment or allocation is already established by negotiation, judicial decree, statute or otherwise, the Association shall employ such apportionment and allocation to the extent it is relevant and applicable;

(vi) Distribution of allocated proceeds shall be made by check payable jointly to individual Owners and their respective Mortgagees, as their interests may appear; and

(vii) No provision of this Article VIII or any other provision of this Declaration, the Articles or the Bylaws shall entitle the Owner of a Unit or other party to priority over any First Mortgagee holding such Unit with respect to the distribution to such Unit of the proceeds of any award, settlement or proceeds from any eminent domain or condemnation proceeding.

B. Continuation and Reorganization. If less than the entire Project is taken by power of eminent domain, ownership pursuant hereto shall not terminate but shall continue. In such event the Project shall be reorganized as follows:

(i) If any partial taking results in the taking of an entire Unit, then the Owner thereof shall cease to be a member of the Association and all voting rights shall terminate;

(ii) If any partial taking results in the taking of a portion of a Unit, the voting rights appertaining to such Unit shall continue.

(iii) If any partial taking results in the taking of a portion of a Unit and if there is a determination made by the Board of Trustees, after duly considering any recommendations, proposals, or other input from the Owners, that such taking makes it impractical to use the remaining portion of such Unit, then all voting rights terminate and the remaining portion of such Unit shall thenceforth be part of the Common Areas;

(iv) The Board of Trustees, after duly considering any recommendations, proposals or other input from the Owners, shall have the duty and authority to make all determinations and to take all actions necessary or appropriate to effectuate reorganization of the Project under the provisions of this Section VIII. 4.B; provided, however, that if any such determination shall have been or such action taken by judicial decree, the Board of Trustees shall defer thereto and proceed in accordance therewith.

C. Repair and Reconstruction. Any repair and reconstruction necessitated by condemnation shall be governed by the provisions specified in Article VII hereof for cases of Damage or Destruction; provided, however, that the provisions of said article dealing with sufficiency or insufficiency of insurance proceeds shall not be applicable.

ARTICLE IX. TERMINATION

1. Required Vote. Except as otherwise expressly provided in this Declaration, the Project may be terminated only by agreement of all Owners of the Units.

2. Termination Agreement. An agreement to terminate shall be evidenced by the execution or ratification of a termination agreement, in the same manner as a deed, by all of the Owners. Such an agreement to terminate must also be approved by the holders of all liens affecting any of the Units. The termination agreement shall specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement, including all ratifications of such termination agreement, shall be recorded in Davis County, Utah and is effective only on recordation.

3. Sale of Project. A termination agreement may provide that the entire Project shall be sold following termination. If, pursuant to the agreement, any real estate in the Project is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale.

4. Association Duties. The Association, on behalf of the Owners, may contract for the sale of real estate in the Project, but the contract is not binding on the Owners until approved pursuant to Sections 1 and 2. If any real estate in the Project is to be sold following termination, title to that real estate on termination vests in the Association as trustee for all Owners. Thereafter, the Association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds of the sale distributed, the Association continues in existence with all powers it had before termination. Proceeds of the sale shall be distributed to Owners and Mortgagees as their interests may appear, based on the relative value of each Unit. Unless otherwise specified in the termination agreement, as long as the Association holds title to the real estate, each Owner and their successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted their Unit in accordance with the terms of this Declaration. During the period of that occupancy right, each Owner and their successors in interest remain liable for all assessments and other obligations imposed on Owners by this Declaration.

5. Proceeds of Sale. Following termination of the Project, the proceeds of any sale of real estate, together with the assets of the Association, shall be held by the Association as trustee for Owners and Mortgagees as their interests may appear. Following termination, Mortgagees holding Mortgages on the Units which were recorded before termination may enforce those liens in the same manner as any lienholder.

ARTICLE X. GENERAL USE RESTRICTIONS

1. Rules and Regulations. The Association shall have authority to promulgate and enforce such reasonable rules, regulations and procedures as may be necessary or desirable to aid the Association in carrying out any of its functions or to insure that the Property is maintained and used in a manner consistent with the interest of the Owners.

2. Use of Common Areas. The Common Areas shall be used only in a manner consistent with their nature and with the rules, regulations and use restrictions applicable to Units. No admission fees, charges for use, leases, or other income generating arrangement of any type shall be employed or entered into with respect to any portion of the Common Areas. Provided, however, vending machines, mailing or packaging and similar services approved by the Board, in its sole and absolute discretion, may be made available within the Common Areas.

3. Use of Units. The Units within the Project may be used and shall be limited in their uses as follows:

A. Use of Buildings. No Building shall be occupied and used except for single-family residential purposes by the Owners, their tenants, and social guests. An Owner shall have the right to rent out their Unit to a tenant or tenants, under such terms and conditions as may be deemed appropriate by the Owner; provided that any tenant shall occupy the Unit subject to all terms and conditions of the Declaration. In no event shall any Unit be rented without the advance written notice to Declarant and/or the Association as provided herein. No trade or business may be conducted in or from any Unit, except that an Owner or occupant residing in the Unit may conduct such business activities with the Unit so long as: a) the existence or operation of the business activity is not apparent or detectable by sight, sound, smell or customer and/or employee traffic from outside the Unit; b) the business activity conforms to all zoning requirements for the Property; c) the business activity is a type which is consistent with the residential character of the Property; and d) the business activity does not increase traffic, constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the property, as may be determined in the sole discretion of the Board.

B. Nuisances. No noxious, illegal, or offensive activities shall be carried on in any Building, or in any part of the Property, nor shall anything be done thereon which may be or may become an annoyance or a nuisance to or which may in any way interfere with the quiet enjoyment of each of the Owners of his respective Unit, or which shall in any way increase the rate of insurance for the Project, or cause any insurance policy to be canceled or to cause a refusal to renew the same, or which will impair the structural integrity of any building.

C. Signs. No Signs advertising any business shall be displayed on any portion of the Property. No signs advertising Units for sale or rent may be displayed on the Property or on any portion of the Property, unless first approved by the Board, and unless such signs comply with any and all local ordinances. Notwithstanding the preceding sentence, until all Units in all phases of the Project have been sold, the Declarant shall have the right to advertise Units for sale, provided Declarant complies with the requirements of the City with respect to such advertising.

D. Animals. No animals or birds of any kind shall be raised, bred, or kept in any Building, or on any portion of the Property; except that no more than two (2) usual and ordinary household pets such as dogs, cats, or birds, may be kept, provided that they are not kept, bred or maintained for any commercial purposes and they are kept under reasonable control at all times. Any such dog shall be kept on a leash at all

times when the dog is in the Common Areas. Owners shall prevent their pets from soiling any portions of the Common Areas and in the event a pet does soil a portion of the Common Areas, the Owner or person in control of such pet shall immediately clean up after the pet. The Board may enact reasonable rules respecting the keeping of animals within the Project, including noise restrictions, and may designate certain areas in which animals may not be taken or kept, or they may require that specific animals not be allowed on any part of the Property. It is intended that all permitted pets shall be small household pets less than 20 lbs., to be kept indoors and not left outdoors overnight and such shall, at no time, become a nuisance to the other Owners within the Project.

E. Garbage and Refuse Disposal. All rubbish, trash and garbage shall be regularly removed from the Property, and shall not be allowed to accumulate thereon. All garbage or trash receptacles, including recyclable containers, shall be stored in the garage except on trash collection days. Trash, garbage and other waste shall be kept in sanitary containers and shall be kept in the garage. No equipment, garbage cans, or storage piles may be kept outside of the Building.

F. Roof-top Antennas. No television, ham radio, citizens band or radio antenna, satellite receiving or other similar electronic receiving or sending device shall be permitted upon the rooftop or side of any Unit or elsewhere without prior written approval of the Board. Such antennas, if used, must be of the type that are installed within the natural building structure. In no case will any such receiving or sending antenna or other device be allowed to interfere with the appearance, peace and quiet enjoyment of any neighboring Unit, Owner's premises or equipment. Provided, however, Declarant and the Association reserve the right and option to install satellite or cable service lines and antennas as needed throughout the Project in connection with its development.

G. Clothes Line. No exterior clothes lines shall be erected or maintained and there shall be no outside laundering or drying of clothes.

H. Power Equipment and Car Maintenance. No power equipment or car maintenance of any nature shall be permitted on the Property. Provided however, car washing or polishing may be done by an Owner, but only in the driveway appurtenant to that Owner's Unit.

I. Recreational Vehicles. No boats, trailers, recreational vehicles, trucks or commercial vehicles belonging to Owners or other residents of the Property shall be parked or stored in or upon any of the Common Areas or the driveways of any Unit. Any boats, trailers, recreational vehicles, trucks or commercial vehicles belonging to Owners or other residents of the Property must fit within and be stored and kept within the Owner's garage.

J. Parking Restriction. No permanent parking shall be allowed in front of the garages of the Units. Only temporary guest parking shall be allowed in front of the garages of the Units. No parking shall be permitted on streets or Common Areas of the Project. Said parking regulation shall be strictly enforced.

K. Window Covers. Curtains and drapes (with a white lining), shutters, or blinds of a neutral color may be installed as window covers, subject to the Board's absolute discretion. No window shall be covered with aluminum foil or similar material. No window tinting or mullions shall be allowed without the prior written approval of the Architectural Committee.

L. Sculptures/Flags. No outdoor sculptures, flag poles and/or flags shall be permitted except by written approval of the Board.

M. Fences. The original fencing established and installed by Declarant as part of the original Project design shall be preserved and maintained by the Owners and by the Association, as the case may be

according to the location of such fencing. Thereafter, all new and/or additional fencing must be approved by the Architectural Committee as provided herein.

N. No Patio/Deck Storage. No observable outdoor storage of any kind shall be permitted on patios, front yards, porches etc, except for patio furniture and portable barbecue grills in good condition, which may be maintained on the backyard patios only.

O. No Hazardous Materials. No Owner shall cause or permit any Hazardous Substance to be used, stored, generated or disposed of on or in such Owner's Unit in violation of any Environmental Law. If any Hazardous Substance is used, stored, generated or disposed of on or in any Owner's Unit, or if an Owner's Unit becomes contaminated in any manner by such Owner (or its lessee), such Owner shall indemnify and hold harmless all other Owners from any and all claims, damages, fines, judgments, penalties, costs, liabilities, or losses including, without limitation, a decrease in the value of the non-contaminated Units, damages caused by loss or restriction of usable space, or any damages caused by adverse impact on the marketing of the non-contaminated Units, and any and all sums paid for settlement of claims, attorney's fees, consultant and expert fees.

As used herein, the term "**Hazardous Substance**" shall mean any pollutants, contaminants, chemicals, waste and any toxic, infectious, carcinogenic, reactive, corrosive, ignitable or flammable chemical or chemical compound or hazardous substance, material or waste, whether solid, liquid or gas, including any quantity of asbestos in any form, urea formaldehyde, PCB's, radon gas, crude oil or any fraction thereof, all forms of natural gas, petroleum products or byproducts or derivatives, radio-active substance, waste waters, sludges, slag and any other substance, material or waste that is subject to regulation, control or remediation under any Environmental Laws.

As used herein, "**Environmental Laws**" shall mean all local, state and federal laws and regulations which regulate or relate to the protection, clean-up and restoration of the environment; the use, treatment, storage, transportation, generation, manufacture, processing, distribution, handling or disposal of, or emission, discharge or other release or threatened release of Hazardous Substance or otherwise dangerous substances, wastes, pollution or materials and shall include the Resource Conservation & Recovery Act, Clean Water Act, Safe Drinking Water Act, Atomic Energy Act, Occupational Safety and Health Act, Toxic Substances Control Act, Clean Air Act, Oil Pollution Act of 1990, Comprehensive Environmental Response Compensation and Liability Act and the Hazardous Materials Transportation Act.

P. Sheds. Each Unit may have no more than one (1) storage shed, not to exceed the floor dimensions of 120 square feet and not to exceed 8 feet in height. The exterior finish and colors shall be compatible with the Building Exteriors. The placement and approval of the exterior finishes of all sheds shall be approved in advance by the Board, whose judgment, reasonably exercised shall be final.

Q. Irrigation. The Common Areas maintenance plan shall provide for an irrigation system for the Project with restricted watering days for each Unit. Each Unit Owner is bound by the schedules and rules that the Association may establish in connection therewith. Each of the Unit Owners agrees not to water their yards and outdoor landscaping more frequently than four times a week unless otherwise authorized by the Common Areas and Maintenance Plan established by the Declarant and administered thereafter by the Association.

4. No Warranty of Enforceability. While Declarant has no reason to believe that any of the restrictive covenants contained in this Article X or elsewhere in this Declaration are or may be invalid or unenforceable for any reason or to any extent. Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenants, and the Unit Owner shall assume all risks of the validity and enforceability thereof and, by acquiring the Unit agrees to hold Declarant harmless therefrom.

5. Exception for Declarant. Notwithstanding the restrictions contained in this Article X, for the seven (7) year period following the date on which this Declaration is filed for record in the office of the County Recorder of Davis County, Utah, Declarant shall have the right to use any Unit owned by it, and any part of the Common Areas reasonably necessary or appropriate, in furtherance of any activities designed to accomplish or facilitate improvement, sale or lease of all Units owned by Declarant. Declarant shall also have the right to maintain a reasonable number of promotional, advertising, or directional signs, banners, or similar devices at any place or places on the Property. Declarant shall have the right from time to time to locate or relocate any of its signs, banners or similar devices.

6. Utility Easements. Easements for installation and maintenance of utilities are reserved as shown on the Plat Map(s). Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities. Easements for the installation, repair and maintenance of utilities are also reserved within each Unit. It is contemplated that telephone, gas, water, fire sprinkling systems, electricity and other utilities may originate in one Unit and terminate in another Unit. A right of access to all such utilities is reserved to the Association and Owners and to all utility suppliers.

7. No Further Subdividing. No Building, Unit or Common Areas may be further subdivided, nor may any easement or other interest therein less than the whole be conveyed by the Owner thereof without the prior written approval of the Association; provided, however, that nothing herein shall be deemed to prevent or require the approval of the Association for the transfer or sale of any Unit to more than one person to be held by them as tenants in common, joint tenants, or otherwise; and provided further, that nothing herein shall be deemed to prevent conversion of the Convertible Space or expansion of the Project on the Expansion Area pursuant to Article XII.

8. Repair of Buildings. No improvement upon the Property 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 by the Owner thereof or the Association as applicable.

9. Insurance. If any activity, materials stored or used on the Property result in an increase in the insurance premium for the Property, the Owner responsible for such increase shall pay the increase in the premium, due at the time the premium is due. The cost of such increase shall be assessed against the Owner responsible therefor and such assessment shall be secured by a lien on such Owner's Unit in favor of the Association in accordance with Article V, Section 6.

10. Improvements and Alterations. There shall be no excavation, construction or alteration which in any way alters the exterior appearance or structural integrity of any Building, Lot or improvement within the Property nor removal of any Building, Unit or other improvement within the Property (other than repairs or rebuilding) without the prior written approval of the Board.

11. General Obligations. Each Owner shall enjoy and be subject to all rights and duties assigned to Owners pursuant to this Declaration. With respect to unsold Units, the Declarant shall enjoy the same rights and assumes the same duties with respect to each unsold Unit.

ARTICLE XI. MORTGAGEE PROTECTION

1. Notice of Action. Upon written request made to the Association by a First Mortgagee, or an insurer or governmental guarantor of a First Mortgage, which written request shall identify the name and address of such First Mortgagee, insurer or governmental guarantor and Unit number or address of the Unit, any such First Mortgage, insurer or governmental guarantor shall be entitled to timely written notice of:

A. Any condemnation loss or any casualty loss which affects a material portion of the Project or any Unit on which there is a First Mortgage held, insured or guaranteed by such First Mortgagee, insurer or governmental guarantor;

B. Any delinquency in the payment of assessments or charges owed by an Owner, whose Unit is subject to a First Mortgage held, insured or guaranteed by such First Mortgagee, insurer or governmental guarantor, which default remains uncured for a period of sixty (60) days;

C. Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and

D. Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified in Section 2 below or elsewhere herein.

2. Matters Requiring Prior Eligible Mortgagee Approval. Except as provided elsewhere in this Declaration, the prior written consent of Owners entitled to vote at least sixty-seven percent (67%) of the votes of the Units in the Association (unless pursuant to a specific provision of this Declaration the consent of Owners entitled to vote a greater percentage of the votes in the Association is required, in which case such specific provisions shall control), and Eligible Mortgagees holding First Mortgages on Units having at least fifty-one percent (51%) of the votes of the Units subject to First Mortgages held by Eligible Mortgagees shall be required to:

A. Abandon or terminate the legal status of the Project after substantial destruction or condemnation occurs.

B. Add or amend any material provision of the Declaration, Articles, Bylaws or Plat Map(s), which establishes, provides for, governs or regulates any of the following (an addition or amendment to such documents shall not be considered material if it is for the purpose of correcting technical errors or for clarification only):

- (i) voting rights;
- (ii) increases in assessments that raise the previously assessed amount by more than 25%, assessment liens, or the priority of assessment liens;
- (iii) reductions in reserves for maintenance, repair, and replacement of Common Areas;
- (iv) responsibility for maintenance and repairs;
- (v) reallocation of interests in the Common Areas, or rights to their use;
- (vi) redefinition of any Unit boundaries;
- (vii) convertibility of Units into Common Areas or vice versa;
- (viii) expansion or contraction of the Project (except as allowed herein), or the addition, annexation, or withdrawal of property to or from the Project;
- (ix) hazard or fidelity insurance requirements;
- (x) imposition of any restrictions on the leasing of Units;
- (xi) imposition of any restrictions on Owner's right to sell or transfer his or her Unit;
- (xii) a decision by the Association to establish self-management if professional management had been required previously by the Declaration or by an Eligible Mortgagee.

(xiii) restoration or repair of the Project (after damage or partial condemnation) in a manner other than that specified in the Declaration; or

(xiv) any provisions that expressly benefit Mortgagees, insurers, or guarantors.

Any Mortgagee, insurer or governmental guarantor who receives a written request from the Association to approve additions or amendments to the constituent documents and who fails to deliver or post to the Association a negative response within thirty (30) days shall be deemed to have approved such request, provided the written request was delivered by certified or registered mail, with a "return receipt" requested.

3. Availability of Project Documents and Financial Statements. The Association shall maintain and have current copies of the Declaration, Articles, Bylaws, and other rules concerning the Project as well as its own books, records, and financial statements available for inspection by Owners or by holders, insurers, and guarantors of First Mortgages that are secured by Units in the Project. Generally, these documents shall be available during normal business hours.

Each year the Association shall make an un-audited financial statement for the preceding fiscal year. Every three (3) years the Association shall make an audited financial statement. The Association shall make available to the holder, insurer, or guarantor of any First Mortgage, the most recent audited financial statement and any subsequent unaudited financial statements.

4. Subordination of Lien. The lien or claim against a Unit for unpaid assessments or charges levied by the Association pursuant to this Declaration shall be subordinate to the First Mortgage affecting such Unit if the First Mortgage was recorded before the delinquent assessment was due, and the First Mortgagee thereunder which comes into possession of or which obtains title to the Unit shall take the same free of such lien or claim for unpaid assessment or charges, but only to the extent of assessments or charges which accrue prior to foreclosure of the First Mortgage, exercise of a power of sale available thereunder, or taking of a deed or assignment in lieu of foreclosure. No assessment, charge, lien, or claim which is described in the preceding sentence as being subordinate to a First Mortgage or as not to burden a First Mortgagee which comes into possession or which obtains title shall be collected or enforced by the Association from or against a First Mortgagee, a successor in title to a First Mortgagee, or the Unit affected or previously affected by the First Mortgage concerned.

5. Payment of Taxes. In the event any taxes or other charges which may or have become a lien on the Common Areas are not timely paid, or in the event the required hazard insurance described in paragraph A of Section 4 of Article VI lapses, is not maintained, or the premiums therefore are not paid when due, any Mortgagee or any combination of Mortgagees may jointly or singly, pay such taxes or premiums or secure such insurance. Any Mortgagee which expends funds for any of such purposes shall be entitled to immediate reimbursement therefor from the Association.

6. Priority. No provision of this Declaration or the Articles gives or may give an Owner or any other party priority over any rights of Mortgagees pursuant to their respective Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for loss to or taking of all or any part of the Units or the Common Areas.

ARTICLE XII. OPTION TO EXPAND

1. Option To Expand. It is anticipated that additions to the Project will be developed in a series of phases. Accordingly, Declarant (or its assigns) hereby reserves, pursuant to Section 57-8-13.6 of the Condominium Act, the option to expand the Project (the "**Option to Expand**") with respect to each Phase of the Expansion Area upon the terms and provisions set forth in this Section without the prior consent of the Owners or the Association. The Option to Expand must be exercised by Declarant (or its assigns) within seven (7) years after recordation of this Declaration. The terms and conditions of the Option to Expand shall be as follows:

A. Legal Description. Subject to the power granted Declarant in Section 2(C) below, the real property subject to the Option to Expand consists of the real property sometimes hereinafter referred to as the "Expansion Area", being more particularly described in Exhibit "D", attached hereto.

B. Order of Exercise. Subject to the provisions of Section 2(C) below, the Option to Expand may be exercised at different times as to the Expansion Area described in Section 2(A) and in any order elected by the Declarant. No assurance is made with regard to which phases of the Expansion Area, if any, will be added to the Project or the order in which such phases will be so expanded. In the event the Option to Expand is exercised with respect to a portion of the Expansion Area, the Option to Expand may subsequently be exercised with respect to any other portion of the Expansion Area.

C. Limitations of Expansion. Declarant shall not be restricted in the location of improvements on the Expansion Area that may be created on the Expansion Area, except as may be required by applicable zoning requirements, ordinances or regulations. The maximum number of Units that may be created on the phases described above (a lesser number of Units may be developed on the Expansion Area) is as set forth on Exhibit "E."

The foregoing limitations on the number of Units to be constructed in any addition or expansion of the Project are set forth herein for the purpose of satisfying U.C.A. § 57-8-10(4)(a)(vii).

D. Use Restrictions. The Units to be located on the Expansion Area shall be subject to the same uses as provided in this Declaration.

E. Use of Common Areas. Each Owner of a Unit constructed on any phase of the Expansion Area shall have an unrestricted right of ingress and egress to and from its Unit over and across all Common Areas of the Property. Each Owner of a Unit constructed on any phase of the Expansion Area shall have the non-exclusive right to use all parking stalls located within the Common Areas of the Property. Each Owner of a Unit constructed on any phase of the Expansion Area shall have the exclusive right to use and enjoy any Limited Common Areas that may be designated for exclusive use by such Owner.

F. Nature of Improvements. Structures other than Buildings may be erected on the Expansion Area. Further improvements may be made to the Expansion Area including recreational facilities, parking areas, walkways and landscaping of the Common Areas contained therein. All Units and improvements shall be generally consistent with the existing Units and improvements within the Project. Declarant reserves the right to add additional Limited Common Areas to the Expansion Area without limitation.

G. Substantial Completion. All Units and other improvements constructed on and made to the Expansion Area shall be substantially completed prior to adding such Units and improvements to the Project.

H. Documentation to Convert. In order to add all or any portion of the Expansion Area to the Project, the Declarant (or its assigns) shall:

- i. Record, with regard to the Expansion Area or any portion thereof that is being added to the Project as Units, Common Areas or Limited Common Areas, a Supplemental Plan ("Supplemental Plan") showing the location and dimensions of the vertical and horizontal boundaries of each Unit, Common Areas or Limited Common Areas, if any, formed out of the Expansion Area or a portion thereof, and assigning any Limited Common Areas which are to be appurtenant to any such Unit. Each such Supplemental Plan shall be certified as to its accuracy and compliance with the requirements of the Condominium Act by the engineer or land surveyor who prepared or supervised the preparation of it; and

ii. Record simultaneously with each Supplemental Plan an amendment to this Declaration ("**Amendment**") describing the addition. Each such Amendment shall assign a Unit number to each Unit, if any, formed out of the Expansion Area or a portion thereof and shall reallocate to each Unit, on the basis provided for in this Declaration, votes appurtenant to each Unit, the apportionment of Common Expenses and the percentage of undivided interest in the Common Areas appertaining to all Units following such addition. Except as otherwise provided by the Condominium Act, each such Amendment or Supplemental Plan shall also describe the Limited Common Areas, if any, formed out of the Expansion Area or a portion thereof, showing or designating the Unit or Units to which each is assigned.

The ownership interest in the Common Areas for all Units in the Project and the apportionment of Common Expenses shall change at the time Declarant records an Amendment and a Supplemental Condominium Plan reflecting Declarant's exercise of the Option to Expand. It is contemplated that there may be multiple amendments filed by Declarant and such amendments and supplements are hereby expressly authorized. Declarant shall have the right to adjust the resulting ownership interests of all Units in the Common Areas of the Project as may be necessary to assure that the total ownership interest equals 100% as required by the Condominium Act.

I. Title to Units. Each Owner, by execution of a contract or deed or the acceptance of a deed to a Unit in the Project, shall be deemed to have consented to all provisions of this Article XII, including the procedure for adjustment of Unit ownership interests. After the filing for record of any Amendment (**Exhibit "B"**) to this Declaration and the Supplemental Plan reflecting Declarant's exercise of the Option to Expand, or any part thereof, legal and equitable title to each Unit thereby created within the Expansion Area including its appurtenant ownership interest in the Common Areas shall be vested in and held by Declarant (or its assigns) and none of the other Owners shall have any claim or title to or interest in such Unit or the appurtenant ownership interest in the Common Areas.

J. Conveyance of Expansion Area. Declarant shall have the right to convey or otherwise transfer its interest in the Expansion Area or any portion thereof, and such conveyance or transfer shall not terminate this Option to Expand with respect to any portion of the Expansion Area and the grantee of any portion of the Expansion Area shall have the same option and rights as Declarant hereunder.

K. Amendment. No provision of this Article XII shall be amended without the prior written consent of Declarant or its successor in interest, so long as Declarant or its successor in interest either owns or has the right to acquire or construct any Units in the Project.

ARTICLE XIII. MISCELLANEOUS

1. Notices. Any notice required or permitted to be given to any Owner under the provisions of this Declaration shall be deemed to have been properly furnished if mailed postage prepaid to the person who appears as an Owner, at the latest address for such person, appearing in the records of the Association at the time of mailing.

2. Term. This Declaration shall be effective upon the date of recordation hereof and, as amended from time to time, shall continue in full force and effect for a term of forty (40) years from the date this Declaration is recorded. From and after said date, this Declaration, as amended, shall be automatically extended for successive periods of ten (10) years each, unless there is an affirmative vote to terminate this Declaration by seventy-five percent (75%) of the votes of the Members cast at an election held for such purpose or otherwise approved in writing by such Members within six (6) months prior to the expiration of the initial effective period hereof or any ten (10) year extension.

3. Amendment. Except as provided in Article XII and elsewhere in this Declaration, any amendment to this Declaration shall require the affirmative vote or written approval of at least sixty-seven percent (67%) of the total

votes of the Association. Any amendment authorized pursuant to this Section shall be accomplished through the recordation in the office of the Davis County Recorder of an instrument executed by the Association. In such instrument an officer or Trustee of the Association shall certify that the vote required by this Section for amendment has occurred. Anything in this Article or Declaration to the contrary notwithstanding, Declarant reserves the unilateral right to amend all or any part of this Declaration to such extent and with such language as may be requested by any federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of the Declaration, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Unit(s) or any portions thereof. Any such amendment shall be effected by the recordation by Declarant of an amendment duly signed by or on behalf of the authorized officers of Declarant with their signatures acknowledged, specifying the federal, state or local governmental agency or the federally chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. Recordation of such an amendment shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such amendment, when recorded, shall be binding upon all of the Project and all persons having an interest therein. It is the desire of Declarant to retain control of the Association and its activities during the anticipated period of planning and development. If any amendment requested pursuant to the provisions of this Section 3 deletes, diminishes or alters such control, Declarant alone shall have the right to amend this Declaration to restore such control. Within seven (7) years from the date of recording the Declaration, and so long as the Declarant is the Owner of any Unit in the Project, this Declaration may be amended or terminated only with the written approval of the Declarant. The Declarant alone may amend or terminate this Declaration prior to the closing of a sale of any Unit.

4. Rights of Action. The Association and any aggrieved Owner shall have a right of action against any Owner(s) who fail to comply with the provisions of the Declaration or the decisions of the Association. Owners shall have a similar right of action against the Association. The prevailing party in any action between the Association and an Owner shall be entitled to recover all fees and costs incurred in pursuing such action.

5. Declarant's Rights Assignable. The rights of Declarant under this Declaration or in any way relating to the Property may be assigned, whereupon the assignee of Declarant shall have all the rights of Declarant hereunder.

6. Interpretation. The captions which precede the Articles and Sections of this Declaration are for convenience only and in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder thereof. This Declaration shall be liberally construed to effect all of its purposes.

7. Covenants to Run With Land. This Declaration and all of the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Declarant, all parties who hereafter acquire any interest in a Unit or in the Common Areas, and their respective grantees, transferees, heirs, devisees, personal representatives, successors and assigns. Each Owner or occupant of a Unit shall comply with, and all interests in all Units or in the Common Areas shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments and determinations contemplated by this Declaration. By acquiring any interest in a Unit or in the Common Areas, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

8. Lists of Owners and Eligible Mortgagees. The Board shall maintain up-to-date records showing: (i) the name of each person who is an Owner, the address of such person, and the Unit which is owned by him; (ii) the name of each person or entity who is an Eligible Mortgagee, the address of such person or entity and the Unit which is encumbered by the Mortgage held by such person or entity; and (iii) the name of each person or entity who is an insurer or governmental guarantor, the address of such person or entity, and the Unit which is encumbered by the Mortgage insured or guaranteed by such person or entity. In the event of any transfer of a fee or undivided fee interest in a Unit, either the transferor or transferee shall furnish the Board with evidence establishing that the transfer has occurred and that the Deed or other instrument accomplishing the transfer is of record in the office of the County Recorder of Davis

EXHIBIT "A"
TO
DECLARATION OF COVENANTS, CONDITIONS, & RESTRICTIONS

LEGAL DESCRIPTION OF THE PROPERTY

All of Edgewood Estates Phase 2, Plat A, comprising the following Units situated thereon:
1A, 1B, 2A, 2B, 3A, 3B, 4A, 4B, 5A, 5B, 6A, & 6B.

EXHIBIT "B"
TO
DECLARATION OF COVENANTS, CONDITIONS, & RESTRICTIONS

List of Units, Votes and Assessment Percentages

<u>Unit</u>	<u>Votes</u>	<u>Ownership & Assessment Percentages</u>
1A	1	8.3333%
1B	1	8.3333%
2A	1	8.3333%
2B	1	8.3333%
3A	1	8.3333%
3B	1	8.3333%
4A	1	8.3333%
4B	1	8.3333%
5A	1	8.3333%
5B	1	8.3333%
6A	1	8.3333%
6B	1	8.3333%
TOTALS	12	100.00

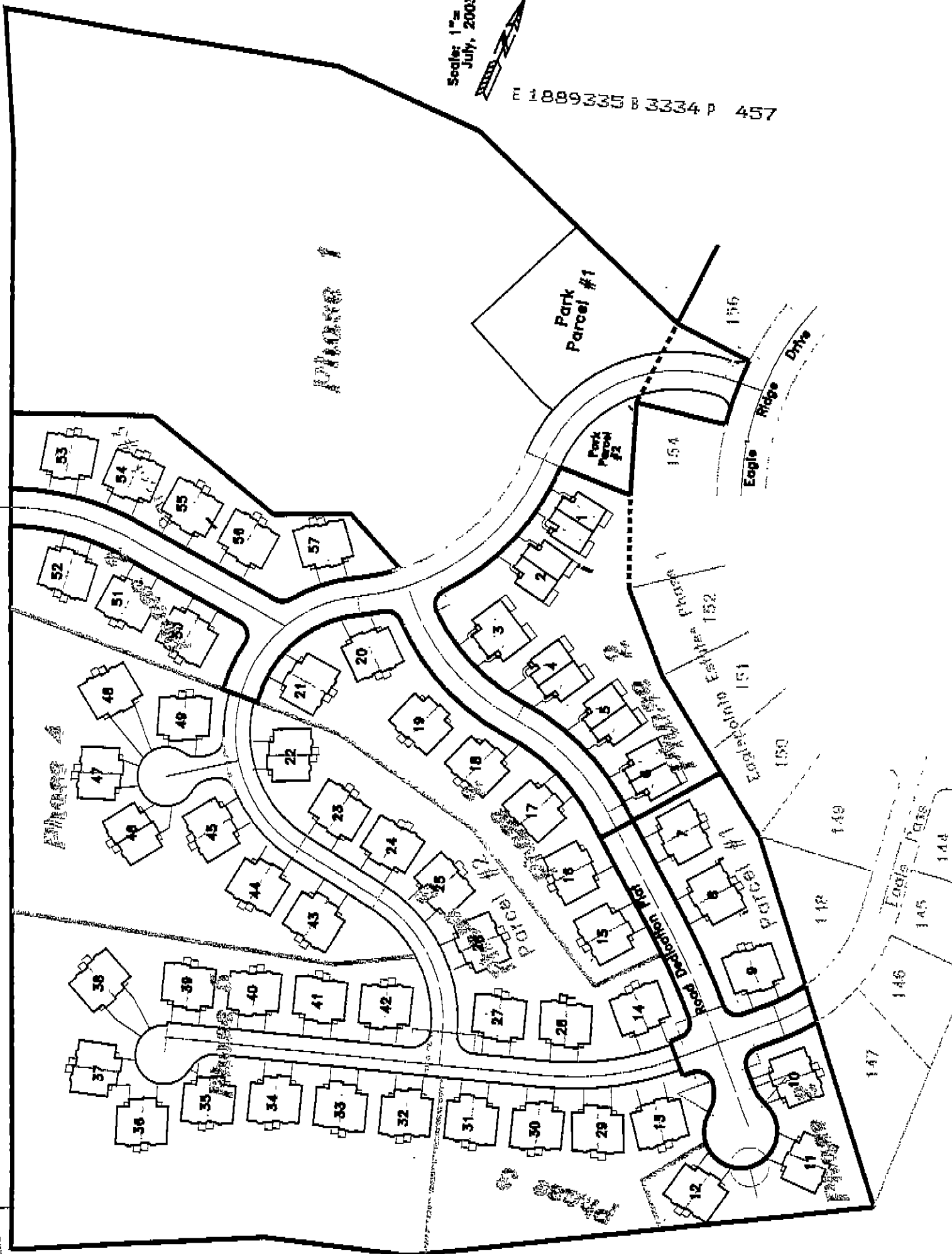
EXHIBIT "C"
TO
DECLARATION OF COVENANTS, CONDITIONS, & RESTRICTIONS

Edgewood Master Plan

Scale: 1" = 180'
July, 2003



E 1889335 B 3334 P 457



For Future Phase
Land Reserved

EXHIBIT "D"
TO
DECLARATION OF COVENANTS, CONDITIONS, & RESTRICTIONS

Legal Description of Expansion Area

Parcel #1

SW 12 - NW - 13
 Beginning at the South Corner of Lot 148 of Eaglepointe Estates Subdivision Phase 1 in North Salt Lake City, Davis County, Utah said point being also N0°04'00"E 844.15 ft. along the Quarter Section Line and West 804.82 ft. from the South Quarter Corner of Section 12, T. 1N., R. 1W., S.L.B. & M. and running thence along the "Dedication Plat of Eagle Pass and Edgemont Drive" in the following five courses: (1) Southwesterly 51.00 ft. along the arc of a 200.00 ft. radius curve to the right through a central angle of 14°36'35" (chord bears S38°16'22"W 50.86 ft.); (2) S45°35'40"W 43.82 ft.; (3) Westerly 31.42 ft. along the arc of a 20.00 ft. radius curve to the right through a central angle of 90°00'00" (chord bears N89°25'20"W 28.28 ft.); (4) Northwesterly 134.43 ft. along the arc of a 983.96 ft. radius curve to the left through a central angle of 7°49'40" (chord bears N48°20'10"W 134.32 ft.); (5) N52°15'00"W 144.61 ft.; thence N37°45'00"E 135.75 ft. along the Boundary of Edgewood Estates Phase 2, Plat A; thence along the Boundary of said Eaglepointe Estates Phase 1 in the following two courses to the Point of Beginning (1) S55°40'48"E 99.61 ft.; (2) S41°30'00"E 211.87 ft. Containing 0.9081 Acres

pt 01.107 - 0070

Parcel #2

Beginning at the South Corner of Lot 147 of Eaglepointe Estates Phase 1 Subdivision in North Salt Lake City, Davis County, Utah said point being also N0°84'00"E 609.20 ft. along the Quarter Section Line and West 596.69 ft. from the South Quarter Corner of Section 12, T. 1N., R. 1W., S.L.B. & M and running thence S60°00'00"W 637.69 ft.; thence S73°00'00"W 197.76 ft.; thence S63°00'00"W 346.46 ft.; thence N24°17'31"W 938.67 ft.; thence N23°41'59"W 37.87 ft. to the Southwest Corner of Edgewood Estates Planned Unit Development Phase 1; thence along the boundary of said Edgewood Phase 1 in the following ten courses: (1) Northeasterly 162.79 ft. along the arc of a 325.00 ft. radius curve to the right through a central angle of 28°41'59" (chord bears N80°39'02"E 161.09 ft.); (2) S85°00'00"E 180.69 ft.; (3) Southeasterly 33.47 ft. along the arc of a 20.00 ft. radius curve to the right through a central angle of 95°53'02" (chord bears S37°03'29"E 29.70 ft.); (4) Southerly 69.27 ft. along the arc of a 209.00 ft. radius curve to the left through a central angle of 18°59'25" (chord bears S1°23'20"W 68.95 ft.); (5) N86°30'00"E 50.21 ft.; (6) Northeasterly 194.73 ft. along the arc of a 159.00 ft. radius curve to the right through a central angle of 70°10'15" (chord bears N25°31'33"E 182.79 ft.); (7) Northeasterly 34.49 ft. along the arc of a 332.91 ft. radius curve to the left through a central angle of 5°56'10" (chord bears N57°38'33"E 34.48 ft.); (8) Easterly 27.02 ft. along the arc of a 20.00 ft. radius curve to the right through a central angle of 77°24'44" (chord bears S86°37'07"E 25.01 ft.); (9) Southeasterly 218.27 ft. along the arc of a 325.00 ft. radius curve to the left through a central angle of 38°28'50" (chord bears S67°09'10"E 214.20 ft.); (10) Southeasterly 163.88 ft. along the arc of a 275.00 ft. radius curve to the right through a central angle of 34°08'35" (chord bears S69°19'18"E 161.46 ft.); thence S5215'00"E 170.66 ft. along the boundary of said Edgewood Phase 1 and the "Dedication of Eagle Pass and Edgemont Drive"; thence along the boundary of said Road Dedication in the following thirteen courses: (1) Southeasterly 127.60 ft. along the arc of a 933.96 ft. radius curve to the right through a central angle of 7°49'40" (chord bears S48°20'10"E 127.50 ft.); (2) Southerly 31.42 ft. along the arc of a 20.00 ft. radius curve to the right through a central angle of 90°00'00" (chord bears S0°34'40"W 28.28 ft.); (3) S45°36'51"W 14.93 ft.; (4) S44°25'20"E 50.00 ft.;

3 (5) N45°34'40"E 14.93 ft.; (6) Easterly 31.42 ft. along the arc of a 20.00 ft. radius curve to the right
 - through a central angle of 90°00'00" (chord bears S89°25'20"E 28.28 ft.); (7) Southeasterly 44.46 ft.
 (along the arc of a 50.00 ft. radius curve to the right through a central angle of 50°57'00" (chord bears
 2 S18°56'51"E 43.01 ft.); (8) Northeasterly 227.32 ft. along the arc of a 50.00 ft. radius curve to the left
 - through a central angle of 260°29'28" (chord bears N56°16'55"E 76.33 ft.); (9) Northwesterly 25.78
 2 ft. along the arc of a 50.00 ft. radius curve to the right through a central angle of 29°32'29" (chord
 - bears N59°11'35"W 25.50 ft.); (10) N44°25'20"W 28.35 ft.; (11) Northerly 31.42 ft. along the arc of
 3 a 20.00 ft. radius curve to the right through a central angle of 90°00'00" (chord bears N0°34'40"E 28.28
 5 ft.); (12) N45°34'40"E 43.82 ft.; (13) Northeasterly 48.10 ft. along the arc of a 250.00 ft. radius curve
 to the left through a central angle of 11°01'22" (chord bears N40°04'39"E 48.02 ft.) to the Northwest
 Corner of said Lot 147 of Eaglepointe Phase 1; thence S41°30'00"E 261.77 ft. along the boundary of
 said Lot 147 to the Point of Beginning. Containing 17.0924 Acres

p + 01-107-0069 = 0070

Parcel #3

Beginning at the Southwest Corner of Lot 4 of Edgewood Estates Planned Unit Development Phase 1 in North Salt Lake City, Davis County, Utah which point is also N0°04'00"E 1,104.43 ft. along the Quarter Section Line and West 2,109.70 ft. from the South Quarter Corner of Section 12, T.1N., R.1W., S.L. B. & M. and running thence along the boundary of said Edgewood Estates Phase 1 in the following nine course: (1) N66°48'00"E 195.84 ft.; (2) S75°00'00"E 210.89 ft.; (3) N65°00'00"E 104.57 ft.; (4) S66°22'52"E 100.67 ft.; (5) Southwesterly 61.91 ft. along the arc of a 282.91 ft. radius curve to the right through a central angle of 12°32'15" (chord bears S54°20'31"W 61.78 ft.); (6) Southwesterly 94.50 ft. along the arc of a 209.00 ft. radius curve to the left through a central angle of 25°54'25" (chord bears S47°39'28"W 93.70 ft.); (7) Southwesterly 21.05 ft. along the arc of a 20.00 ft. radius curve to the right through a central angle of 60°17'44" (chord bears S64°51'08"W 20.09 ft.); (8) N85°00'00"W 209.58 ft.; (9) Southwesterly 187.83 ft. along the arc of a 375.00 ft. radius curve to the left through a central angle of 28°41'59" (chord bears S80°39'02"W 185.88 ft.); thence N23°41'59"W 101.75 ft. to the Point of Beginning. Containing 1.3557 Acres

p + 0069

E 1889335 B 3334 P 460

EXHIBIT "A"
TO
DECLARATION OF COVENANTS, CONDITIONS, & RESTRICTIONS

LEGAL DESCRIPTION OF THE PROPERTY

All of Edgewood Estates Phase 2, Plat A, comprising the following Units situated thereon:
1A, 1B, 2A, 2B, 3A, 3B, 4A, 4B, 5A, 5B, 6A, 6B, & Common Areas.

01-296-0001 thru 0013