

9410513

9410513
6/21/2005 4:11:00 PM \$170.00
Book - 9148 Pg - 286-353
Gary W. Ott
Recorder, Salt Lake County, UT
FIRST AMERICAN TITLE
BY: eCASH, DEPUTY - EF 68 P.

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

for

DEARBOURNE HEIGHTS

(An Expandable Utah Planned Unit Development)

**DECLARANT
DH-DRAPER, LLC
a Utah limited liability company**

TABLE OF CONTENTS

RECITALS:..... 1

I. DEFINITIONS..... 2

1. Additional Charges 2

2. Additional Land 2

3. Articles of Incorporation..... 2

4. Assessment 2

5. Association 2

6. Building 2

7. Business Use and Trade 2

8. By Laws 2

9. Capital Improvement 3

10. Committee 3

11. Common Areas 3

12. Common Expense 3

13. Community 3

14. Community Wide Standard 3

15. Declaration 4

16. Dwelling Unit 4

17. Eligible Insurer 4

18. Eligible Mortgagee..... 4

19. Eligible Votes 4

20. Guest 4

21. Improvement 4

22. Land 4

23. Lot 4

24. Lot Number 5

25. Majority 5

26. Management Committee 5

27. Manager 5

28. Map 5

29. Member 5

30. Mortgage..... 5

31. Mortgagee 5

32. Owner 5

33. Period of Declarant=s Control 5

34. Permanent Resident 5

35. Person 6

36. Phase 6

37. Plat Map 6

38. Project 6

39. Project Documents..... 6

40.	Property	6
41.	Recreational, Oversized or Commercial Vehicle	6
42.	Repair.....	6
43.	Resident.....	6
44.	Residential Lot.....	6
45.	Single Family	6
46.	Single Family Residence.....	7
II. SUBMISSION		7
III. COVENANTS, CONDITIONS, AND RESTRICTIONS		7
1.	Description of Improvements.....	7
2.	Description and Legal Status of the Property	7
3.	Membership in the Association, Classes and Voting Allocations.....	8
4.	Incorporation of the Association	9
5.	Conveyancing	9
6.	Rights of Owners.....	9
	a) Similar Treatment	10
	b) Religious and Holiday Displays.....	10
	c) Household Composition	10
	d) Activities Within Lots.....	10
	e) Allocation of Burdens and Benefits.....	10
	f) Alienation.....	10
	g) Reasonable Rights to Develop	10
	h) Abridging Existing Rights	10
	i) Nature and Restrictions on Ownership and Use in General.....	11
	j) Mandatory Association.....	11
	k) Joint or Common Utility Easements with Neighboring Subdivisions Project or Developments	11
	l) Easements and Rights of Way.....	11
	m) Rules and Regulations.....	11
	n) Restrictions and Limitations of Use.....	12
7.	Leases	17
8.	Easement -- Support, Maintenance and Repair	18
9.	Liability of Owners and Residents For Damages.....	18
10.	Encroachments.....	18
11.	Management Committee	18
12.	Status and General Authority of Committee	18
	a) Access.....	18
	b) Grant Easements.....	18
	c) Execute Documents.....	19
	d) Standing	19
	e) Enter Into Contracts	19
	f) Transfer Interests in Real Property.....	19
	g) To Add or Purchase.....	19

h)	Promulgate Rules	19
i)	Meetings.....	19
j)	Delegation of Authority.....	19
k)	Sewer Laterals.....	19
l)	All other Acts.....	19
13.	Delegation of Management Responsibilities	19
14.	Owners Meetings.	20
15.	Lists of Lot Owners, Eligible Mortgagees, and Eligible Insurers or Guarantors.....	20
16.	Assumption of Risk.	20
17.	Capital Improvements.....	21
a)	Committee Discretion/Expenditure Limit.....	21
b)	Expenditure Limit Without Consent of Owners.	21
c)	Improvement Changing the Nature of the Project.....	21
18.	Recycling Programs.....	21
19.	Provision of Services	21
20.	View Impairment.....	22
21.	Relationship with Tax-Exempt Organizations.....	22
22.	The Maintenance Responsibility of the Association	22
23.	The Maintenance Responsibility of the Owners	23
24.	Garbage Removal.....	23
25.	Standard of Care - Generally.....	23
26.	Standard of Care - Landscaping.....	23
27.	Neglect.....	24
a)	Notice of Intent to Repair.....	24
b)	Emergency Situation.....	24
c)	Optional Repairs.....	24
d)	Costs and Expenses	24
28.	Changes to Areas of Personal or Common Responsibility.	24
29.	Alterations to the Common Area	24
30.	Declarant=s Rights to Change Design and Construction.....	25
31.	Common Expenses	25
a)	Declarant.....	25
b)	Purpose of Common Area Expenses.....	25
c)	Budget	25
d)	Apportionment	26
e)	Approval of Budget and Assessments	26
f)	Payment of Assessments.	26
g)	Personal Obligation of Owner.....	26
h)	Equitable Changes.	26
i)	Dates and Manner of Payments.	26
j)	Reserve Account(s).....	26
k)	Capital Asset Table.....	27
l)	Analysis Report	27
m)	Statement of Assessments Due.	27
n)	Superiority of Assessments.....	27

32.	Special Assessments	27
	a) Committee Based Assessment.	27
	b) Association Approval.	27
33.	Benefit Assessments.	27
	a) Benefit only to Specific Unit	28
	b) Unequal or Disproportionate Benefit.	28
34.	Individual Assessments	28
35.	Collection of Assessments.....	28
	a) Delinquent Accounts	28
	b) Late Fees and Default Interest	28
	c) Lien.....	28
	d) Foreclosure of Lien and/or Collection Action.....	29
	e) Personal Obligation.....	29
	f) No Waiver.....	29
	g) Duty to Pay Independent	29
	h) Foreclosure of Lien as Mortgage or Trust Deed.....	29
	i) Appointment of Trustee.....	29
	j) Attorney-in-Fact.....	29
36.	Liability of Management Committee.	30
37.	Insurance.....	30
	a) Property Insurance.....	30
	b) Flood Insurance.....	30
	c) Liability Insurance.	31
	d) Director's and Officer's Insurance.....	31
	e) Fidelity Bond.....	31
	f) Earthquake Insurance	32
	g) Miscellaneous Items.	32
38.	Destruction, Condemnation, and Obsolescence.	34
	a) Definitions.....	34
	b) Determination by Committee	35
	c) Restoration of the Project.	35
	d) Notices of Destruction or Obsolescence.....	35
	e) Excess Insurance.	36
	f) Inadequate Insurance.....	36
	g) Reallocation in Event of Partial Restoration.....	36
	h) Sale of Project.....	36
	i) Authority of Committee to Represent Owners in Condemnation or to Restore or Sell.....	36
	j) Settlement Proceeds.	36
	k) Restoration Power.....	36
	l) Right of Entry.....	37
	m) Termination of Legal Status.....	37
39.	Consent in Lieu of Vote.....	37
	a) Sixty-Day Limit.....	37
	b) Change In Ownership	37

40.	Mortgagee Protection	37
	a) Effects of Voluntary and Involuntary Sale.....	37
	b) Books and Records Available for Inspection	38
	c) Right to Financial Statement.....	38
	d) Management Contracts.....	38
	e) Eligible Mortgagee Designation.....	38
41.	Amendment.....	39
	a) Consent of Eligible Mortgagee.....	39
42.	Declarant's Sales Program.....	40
	a) Sales Office and Model Dwellings.....	41
	b) Promotional.....	41
	c) Common Area Use.....	41
	d) Relocation and Removal.....	41
43.	Limitation on Improvements by Association.....	41
44.	Completion Obligation.....	41
	a) Lots.....	41
	b) Common Area.....	41
45.	Declarant's Rights Assignable.....	41
46.	Expansion of the Project.....	42
	a) Reservation of Option to Expand.....	42
	b) Supplemental Declarations and Supplemental Maps.....	42
	c) Expansion of Definitions.....	42
	d) Declaration Operative on New Units.....	42
	e) Right of Declarant to Adjust Ownership Interest in Common Areas.....	43
	f) Other Provisions Concerning Expansion.....	43
47.	Combination of Lots.....	44
48.	[Intentionally Deleted]	45
49.	Transfer of Management.....	45
50.	Working Capital Fund.....	45
51.	Interpretation.....	46
52.	Covenants to Run with Land.....	46
53.	Enforcement and Right to Recover Attorneys Fees.....	46
54.	Agent for Service of Process.....	47
55.	Government Financing.....	47
56.	Remedies and Fines.....	47
57.	Termination of Utilities and Right to Use Amenities for Non-Payment of Assessments.....	48
58.	Assignment of Rents.....	49
59.	Term.....	51
60.	Effective Date.....	51

EXHIBIT "A"	
LEGAL DESCRIPTION OF THE TRACT	52

EXHIBIT "B"

PERCENTAGES OF UNDIVIDED OWNERSHIP INTEREST	53
EXHIBIT "C"	
BY-LAWS	54
ARTICLE I - PLAN OF LOT OWNERSHIP AND INCORPORATION	
1. Submission	54
2. Organizational Form	54
3. Office and Registered Agent	54
ARTICLE II - ASSOCIATION	
1. Composition	54
2. Place of Meeting	54
3. Notice of Meeting	54
4. Qualified Voters	54
5. Proxies	55
6. Quorum Voting	55
7. Order of Business	55
8. Conduct of Meeting	55
9. Open Meeting Policy	56
10. Action May Be Taken Without a Meeting	56
11. Executive Session	56
ARTICLE III - MANAGEMENT COMMITTEE	
1. Powers and Duties	56
2. Composition of Management Committee	57
3. Election and Term of Office of the Committee	57
4. First Meetings	57
5. Regular Meetings	57
6. Special Meetings	57
7. Waiver of Notice	58
8. Committee=s Quorum	58
9. Vacancies	58
10. Removal of Committee Member	58
11. Conduct of Meetings	58
12. Report of Committee	58
ARTICLE IV - OFFICERS	
1. Designation	59
2. Election of Officers	59
3. Removal of Officers	59
4. President	59
5. Vice-President	59
6. Secretary	59
7. Treasurer	60

ARTICLE V - FISCAL YEAR.....	60
ARTICLE VI - INVESTMENT OF COMMON FUNDS	60
ARTICLE VII - AMENDMENTS TO BY-LAWS	
1. Amendments.....	60
2. Recording.....	60
ARTICLE VIII - NOTICE	
1. Manner of Notice.....	61
2. Waiver of Notice	61
ARTICLE IX - COMPLIANCE, CONFLICT, AND MISCELLANEOUS PROVISIONS	
1. Conflict.....	61
2. Waiver.....	61
3. Captions	61
4. Interpretation.....	61
5. Severability.....	61
EXHIBIT D-1 (Additional Land/Phase 2).....	63

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
DEARBOURNE HEIGHTS
(An Expandable Utah Planned Unit Development)**

This Declaration Of Covenants, Conditions, and Restrictions for Dearbourne Heights is made and executed by DH-Draper, LLC, a Utah limited liability company, whose principal address is 261 East Broadway, Suite 100, Salt Lake City, Utah 84111 (hereinafter referred to as the "Declarant").

RECITALS

- A. The Property is an area of unique natural beauty, featuring distinctive terrain;
- B. By subjecting the Property to this Declaration, it is the desire, intent and purpose of Declarant to create a community in which beauty shall be substantially preserved, which will enhance the desirability of living on that real estate subject to this Declaration, and which will increase and preserve the utility, attractiveness, quality and value of the lands and improvements therein.
- C. This Declaration of Covenants, Conditions, and Restrictions affects that certain real property located in Salt Lake County, Utah described with particularity in Article II below (hereinafter referred to as the "Tract").
- D. Declarant is the owner of the Tract.
- E. Declarant has constructed or is in the process of constructing upon the Tract a residential Planned Unit Development which shall include certain Lots, Common Area, and other improvements. The construction will be completed in accordance with the plans contained in the Plat Map to be recorded concurrently herewith.
- F. Declarant intends to sell to various purchasers the fee title to the individual residential Lots contained in the Tract, together with an appurtenant undivided ownership interest in the Common Area and a corresponding membership interest in the Association of Lot Owners, subject to the Plat Map, and the covenants, conditions and restrictions set forth herein.
- G. Declarant desires, by filing this Declaration of Covenants, Conditions, and Restrictions and Plat Map, to submit the property and all improvements now or hereafter constructed thereon to the provisions and protective covenants set forth herein.
- H. The Project is to be known as "DEARBOURNE HEIGHTS."

I. Since the completion of the Project may be in phases, the completed Project will consist of the original phase and all subsequent phases.

COVENANTS, CONDITIONS, AND RESTRICTIONS

NOW, THEREFORE, for the reasons recited above and subject to the covenants, conditions and restrictions set forth below, Declarant hereby makes the following Declaration:

I. DEFINITIONS

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

1. Additional Charges shall mean and refer cumulatively to all collection and administrative costs, including but not limited to all attorneys fees, fines, late fees, default interest, service fees, filing and recordation fees, and other expenditures incurred or charged by the Association.
2. Additional Land shall mean and refer to additional real property subject to Declarant's unilateral right of annexation as provided elsewhere in this Declaration, which property is more particularly described in Exhibit "D-1" attached hereto and incorporated herein by this reference.
3. Articles of Incorporation shall mean and refer to the Articles of Incorporation of DEARBOURNE HEIGHTS TOWNHOME OWNERS ASSOCIATION, INC. on file or to be filed with the Utah Department of Commerce.
4. Assessment shall mean and refer to any amount imposed upon, assessed or charged a Lot Owner or Resident at the Project.
5. Association shall mean and refer to all of the Lot Owners at DEARBOURNE HEIGHTS taken as, or acting as, a group in accordance with the Declaration.
6. Building shall mean and refer to any of the structures constructed in the Project.
7. Business Use and Trade shall mean and refer to any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: a) such activity is engaged in full or part-time; b) such activity is intended to or does generate a profit; or c) a license is required therefor.
8. By Laws shall mean and refer to the By Laws of the Association, a copy of which is attached to and incorporated in this Declaration by reference as Exhibit "C".
9. Capital Improvement shall mean and refer to a permanent addition to or the betterment of real property that enhances its capital value and improves the expenditure of labor or money and is designed to make the property more useful or valuable as distinguished from ordinary

repairs.

10. Committee shall mean and refer to the Management Committee of the Association as duly constituted.

11. Common Areas shall mean and refer to all real property in the Project owned by the Association including but not limited to the following items:

(a) The real property and interests in real property submitted hereby, including the entirety of the Tract and all improvements constructed thereon, excluding the individual Lots;

(b) All Common Areas designated as such in the Plat Map or Maps;

(c) All utility installations and all equipment connected with or in any way related to the furnishing of utilities to the Project and intended for the common use of all Lot Owners, such as telephone, electricity, gas, water, cable television, and sewer, including the main gas line or lines running through the Buildings;

(d) The Project's outdoor grounds, landscaping, open spaces, pool, clubhouse, exterior lighting, common fencing, sidewalks and parking spaces, roadways, walking trails;

(e) All portions of the Project not specifically included within the individual Lots; and

(f) All other parts of the Project normally in common use or necessary or convenient to the use, existence, maintenance, safety, operation or management of the Property owned by the Association for the common benefit of its Members.

12. Common Expense shall mean and refer to: (a) All sums lawfully assessed against the Owners; (b) Expenses of administration, maintenance, repair or replacement of the Project; (c) Expenses allocated by the Association among the Owners; (d) Expenses agreed upon as common expenses by the Association; and (e) Expenses declared as common expenses by the Declaration.

13. Community shall mean and refer to the Project.

14. Community Standard or Community Wide Standard shall mean and refer to the standard of conduct, maintenance, or other activity generally prevailing in the Community, as determined by the Management Committee from time to time.

15. Declaration shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions for DEARBOURNE HEIGHTS.

16. Dwelling or Dwelling Unit shall mean and refer to a living unit constructed upon a Lot.

17. Eligible Insurer shall mean and refer to an insurer or governmental guarantor of a

mortgage or trust deed who has requested notice in writing of certain matters from the Association in accordance with this Declaration.

18. Eligible Mortgagee shall mean and refer to a mortgagee, beneficiary under a trust deed, or lender who has requested notice in writing of certain matters from the Association in accordance with this Declaration.

19. Eligible Votes shall mean and refer to those votes available to be cast on any issue before the Association or the Committee. A vote which is for any reason suspended is not an "eligible vote".

20. Guest shall mean and refer to an invitee, temporary visitor or any person whose presence within the Project is approved by or is at the request of a particular Resident.

21. Improvement shall mean and refer to any physical change or addition to the Land to make it more valuable.

22. Land shall mean and refer to all of the real property subject to this Declaration.

23. Lot shall mean and refer to a separate physical part of the Property intended for independent use as shown on the Plat Map, including, when the context requires, the Dwelling Unit constructed thereon, one or more rooms or spaces located in one or more floors or part or parts of floors in a Building, the ground located underneath the Lot and the air space above. Mechanical equipment and appurtenances located within any one Lot or Dwelling, or located without said Lot or Dwelling but designated and designed to serve only that Lot or Dwelling, such as appliances, electrical receptacles and outlets, air conditioning compressors, furnaces, water heaters, apparatus, systems or equipment, fixtures and the like, shall be considered part of the Lot; so shall all decorated surfaces of interior walls, floors and ceilings, including but not limited to all paint, wallpaper, wall coverings, windows and window frames, doors and door frames, trim, carpeting, tile and linoleum. All pipes, wires, conduits, or other utility lines or installations constituting a part of the Lot or Dwelling or serving only the Lot or Dwelling, and any structural members, parts, components or any other property of any kind, including fixtures or appliances within any Lot or Dwelling, which are removable without jeopardizing the integrity, soundness, safety or usefulness of the remainder of the Building within which the Lot or Dwelling is located shall be deemed to be part of the Lot. Each Lot shall be assigned a separate "parcel" or "tax identification" number by the appropriate governmental agency.

24. Lot Number shall mean and refer to the number, letter or combination thereof designating a particular Lot.

25. Majority shall mean and refer to those eligible votes of Owners or other groups as the context may indicate totaling more than fifty (50.0%) percent of the total eligible number.

26. Management Committee shall mean and refer to the committee of Owners elected to direct the affairs of the Association.

27. Manager shall mean and refer to the person or entity appointed or hired by the Association to manage and operate the Project and/or assist in the administration of the Association.

28. Map shall mean and refer to the Plat Map on file in the office of the County Recorder of Salt Lake County, State of Utah.

29. Member, unless the context clearly requires otherwise, shall mean and refer to the Owner of a Lot, each of whom is obligated, by virtue of his ownership to be a member of the Association.

30. Mortgage shall mean and refer to both a first mortgage or first deed of trust on any Lot, but shall not mean or refer to an executory contract of sale.

31. Mortgagee shall mean and refer to a mortgagee under a first mortgage or a beneficiary under a first deed of trust on any Lot, but shall not mean or refer to a seller under an executory contract of sale.

32. Owner shall mean and refer to the person who is the owner of record (in the office of the County Recorder of Salt Lake County, Utah) of a fee or an undivided fee interest in a Lot, excluding a mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

33. Period of Declarant's Control shall mean and refer to a period of time commencing on the date this Declaration is recorded and terminating on the occurrence of the earliest of the following events: (a) seven (7) years from the effective date of this Declaration, (b) not less than 120 days after all of the Additional Land has been added and Lots to which three-fourths of the undivided interest in the Common Areas and Facilities appertain have been conveyed, or (c) the Declarant executes and records a written Waiver of his right to control.

34. Permanent Resident shall mean and refer to anyone who resides in the Project for more than four (4) consecutive weeks or for more than eight (8) weeks in any calendar year.

35. Person shall mean and refer to a natural person, corporation, partnership, trust, limited liability company, or other legal entity.

36. Phase shall mean and refer to a particular stage or area of development within the Project so designated by the Developer.

37. Plat Map shall mean and refer to the "Plat Map (or Maps) of DEARBOURNE HEIGHTS, a Utah Planned Unit Development" on file in the office of the County Recorder of Salt Lake County, as amended or supplemented from time to time.

38. Project shall mean and refer to DEARBOURNE HEIGHTS, a Utah Planned Unit Development.

39. Project Documents shall mean and refer to the Declaration, By Laws, Rules and

Regulations, and Articles of Incorporation.

40. Property shall mean and refer to all of the land or real estate, improvements and appurtenances submitted to this Declaration.

41. Recreational, Oversized, or Commercial Vehicle shall mean and refer to any recreational, commercial or oversized vehicle, motor home, commercial vehicle, tractor, golf cart, mobile home or trailer (either with or without wheels), camper, camper trailer, boat or other watercraft, boat trailer, or any other recreational or commercial transportation device of any kind.

42. Repair shall mean and refer to merely correcting the damage done sometimes by accident or fire or other cause, but more often due to the ravages of time and the deterioration resulting from ordinary wear and tear, by substituting for the damage, decayed or worn-out parts, new material, usually similar to that replaced, and so restoring the structure to its original sound condition.

43. Resident shall mean and refer to any person living or staying at the Project. This includes but is not limited to all lessees, tenants and the family members, agents, representatives, or employees of Owners, tenants or lessees.

44. Residential Lot shall mean and refer to a Lot to be used for residential purposes, primarily for the construction of a Dwelling and yard.

45. Single Family shall mean and refer to *one* of the following: (a) a single person, (b) a group of natural persons related to each other by blood or legally related to each other by marriage or adoption, and an additional person or persons as a caretaker or as domestic help, or (c) a group of not more than three unrelated persons who maintain a common household to be distinguished from a group occupying a boarding house, club, fraternity or hotel.

46. Single Family Residence shall mean and refer to both the architectural style of a Dwelling and the nature of the residential use permitted.

II. SUBMISSION

The Land known as Phase 1, described with particularity on Exhibit "A" attached hereto and incorporated herein by this reference, is hereby submitted to the Declaration.

The Land is hereby made subject to, and shall be governed by the Declaration, and the covenants, conditions and restrictions set forth herein.

The Land is SUBJECT TO the described easements and rights of way.

TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above-described parcel of real property.

ALL OF THE FOREGOING IS SUBJECT TO: All liens for current and future taxes,

assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all Patent reservation and exclusions; any mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described Tract or any portion thereof, including, without limitation, any mortgage or deed of trust; all visible and necessary easements and rights-of-way; all easements and rights-of-way of record; any easements, rights of-way, encroachments, or discrepancies shown on or revealed by the Plat Maps or otherwise existing; an easement for each and every common area improvement, equipment, pipes, lines, cables, wires, utility systems, or similar facilities which traverse or partially occupy the above-described Tract; and all easements necessary for servicing, repairing, ingress to, egress from, maintenance of, and replacement of all such common area improvements, equipment, pipes, lines, cables, wires, utility systems, and similar facilities.

III. COVENANTS, CONDITIONS, AND RESTRICTIONS

The foregoing submission is made upon, under and subject to the following covenants, conditions, and restrictions:

1. Description of Improvements. The significant improvements contained in the Project include residential Lots, Buildings, Dwelling Units, Common Area, public roadways, parking, storm and water detention basin, landscaping and view corridors, clubhouse, swimming pool, walking trail, linear park and play areas. There will be 28 Lots in Phase 1. There will be a variety of residential Dwelling Unit models in the Project. The Project will also contain other improvements of a less significant nature. The location and configuration of the improvements referred to in the foregoing sentences are depicted on the Plat Map.

2. Description and Legal Status of the Property. The Map shows the type and location of each Lot and its Lot Number, which are reserved for the exclusive use of a Lot or Lot Owners, and the Common Areas and Facilities in the vicinity. The Common Area shall be deeded to and owned by the Association. Each Lot Owner shall have an equal and uniform undivided percentage of ownership interest in the Association appurtenant to his Lot. All Lots shall be capable of being independently owned, encumbered, and conveyed, and shall have separate tax identification or parcel numbers.

3. Membership in the Association, Classes of Membership and Voting Allocations. Membership in the Association is mandatory and may not be partitioned from the ownership of a Lot. Each Lot Owner by virtue of his accepting a deed or other document of conveyance to a Lot is deemed to be a member of the Association. The Association shall have two classes of membership - Class A and Class B -- described more particularly as follows:

(a) Class A. Class A Members shall be all Owners with the exception of the Class B Members, if any. Class A Members shall be entitled to vote on all issues before the Association, subject to the following:

- (1) One Vote. Each Lot shall have one (1) vote;
- (2) Subject To Assessment. No vote shall be cast or counted for any

Lot not subject to assessment;

(3) Multiple Owners. When more than one (1) person or entity holds such interest in a Lot, the vote for such Lot shall be exercised as those persons or entities themselves determine and advise the Secretary of the Association prior to any meeting. In the absence of such advice, the vote of the Lot shall be suspended in the event more than one (1) person or entity seeks to exercise it.

(4) Leased Lot. Any Owner of a Lot which has been leased may, in the lease or other written instrument, assign the voting right appurtenant to that Lot to the lessee, provided that a copy of such instrument is furnished to the Secretary at least three (3) days prior to any meeting.

(b) Class B. Class B Members shall be the Declarant and any successor of Declarant who takes title for the purpose of development and sale of Lots, and who is designated as such in a recorded instrument executed by Declarant. The Class B Member shall originally be entitled to five (5) votes per Lot owned. The Class B membership and the Class B Control Period shall terminate, and Class B membership shall convert to Class A membership upon the happening of the earlier of the following (the "Event" or "Events"):

(1) Lots Sold. Four (4) months after seventy five percent (75%) of the Dwelling Units constructed upon the Lots in the whole Project, including any land added or to be added, have been sold and conveyed; or

(2) Seven Years. Seven (7) years from the effective date of this Declaration; or

(3) Election. When, in its sole discretion, Declarant so determines.

From and after the happening of these events, whichever occurs earlier, the Class B Member shall be deemed to be a Class A Member entitled to one vote for each Lot owned. Within forty-five (45) days of the occurrence of such event, the Declarant shall call a meeting, in the manner described in the By Laws of the Association for special meetings, to advise the membership of the termination of Class B status and, if it has not already occurred, to schedule transition of the operation and management of the entire Project to the Association.

4. Incorporation of the Association. The Association shall be in the form of a corporation or limited liability company. If for any reason the Association loses such status, the Management Committee may re-incorporate or reinstitute the corporation or limited liability company without any additional approval required.

5. Conveyancing. Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering a Lot shall describe the interest or estate involved substantially as follows:

All of [Lot No _____] [Building No. _____] contained within DEARBOURNE HEIGHTS,

PHASE [___], a Utah Planned Unit Development, as the same is identified in the Plat Map recorded in Salt Lake County, Utah as Entry No. 9275109 in Book 2005 P at Page 12 of the official records of the County Recorder of Salt Lake County, Utah (as said Plat Map may have heretofore been amended or supplemented) and in the Declaration of Covenants, Conditions, and Restrictions of DEARBOURNE HEIGHTS, recorded in Salt Lake County, Utah as Entry No. _____ in Book _____ at Page _____ of the official records of the County Recorder of Salt Lake County, Utah (as said Declaration may have heretofore been supplemented), together with an undivided percentage of ownership interest in the common areas and facilities.

Regardless of whether or not the description employed in any such instrument is in the above-specified form, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot. Neither the membership in the Association, nor the percentage of ownership interest in the Common Areas, shall be separated from the Lot to which it appertains; and, even though not specifically mentioned in the instrument of transfer, such mandatory membership in the Association and such right of exclusive use shall automatically accompany the transfer of the Lot to which they relate.

6. Rights of Owners. Except as may be specifically set forth in the Project Documents, neither the Management Committee nor the Members may adopt any rule in violation of the following provisions:

(a) Similar Treatment. Similarly situated Owners and occupants shall be treated similarly.

(b) Religious and Holiday Displays. The rights of Owners and occupants to display religious and holiday signs, symbols, and decorations on their Lots of the kinds normally displayed in residences located in single family residential neighborhoods shall not be abridged, except that the Association may adopt time, place, and manner restrictions regulating displays which are visible from outside the Lot.

(c) Household Composition. No rule shall interfere with the freedom of occupants of Lots to determine the composition of their households, except that the Declaration limits residency in a Dwelling to a Single Family and the Association shall have the power to limit the total number of occupants permitted in each Dwelling on the basis of the size and facilities of the Dwelling and its fair share use of the Common Area.

(d) Activities Within Lots. No rule shall interfere with the activities carried on within the confines of Lots, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Lots, that generate excessive noise or traffic, that create unsightly conditions visible from outside the Lot, or that create any unreasonable sound or annoyance.

(e) Allocation of Burdens and Benefits. No rule shall alter the basis for allocation of financial burdens among various Lots or rights to use the Common Area to the detriment of any

Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the use of the Common Area, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who abuse the Common Area, violate rules or this Declaration, or fail to pay assessments. This provision does not affect the right to increase the amount of Assessments.

(f) Alienation. No rule shall prohibit the leasing or transferring of any Dwelling, or require consent of the Association or Management Committee for leasing or transferring of any Lot; provided, the Association or the Management Committee may require a minimum lease term of up to six (6) months. The Association may require that Owners use lease forms approved by the Association (or include specific terms in their leases), and may impose a review or administration fee on the lease or transfer of any Lot.

(g) Reasonable Rights to Develop. No rule or action by the Association or Management Committee shall unreasonably impede Declarant's right to develop in accordance with the Master Plans, including, but not limited to, the rights of the Declarant as set forth herein.

(h) Abridging Existing Rights. Any rule which would require Owners to dispose of personal property being kept on the Property shall apply prospectively only and shall not require the removal of any property which was being kept on the Property prior to the adoption of such rule and which was in compliance with all rules in force at such time unless otherwise required to be removed by law. The limitations in this subsection shall apply to rules only; they shall not apply to amendments to this Declaration.

(i) Nature and Restrictions on Ownership and Use in General. Each Owner shall have and enjoy the privileges of fee simple ownership of his Lot. There shall be no requirements concerning who may own a Lot, it being intended that they may and shall be owned as any other property rights by any Person. The Project shall be used only for residential purposes, except as expressly set forth below, and the Common Areas shall only be used in a manner consistent with the residential nature of the Project.

(j) Mandatory Association. Each purchaser of a Lot by virtue of his acceptance of a deed or other document of conveyance shall automatically become a Member of the Association.

(k) Joint or Common Utility Easements with Neighboring Subdivisions, Projects or Developments. The Declarant for itself and/or its successors in interest (including but not limited to the Association), hereby reserves the irrevocable and exclusive right, without any additional consent required, to enter into easement agreements with or to convey to owners or developers of adjoining subdivisions, projects or developments any and all reasonable and necessary utility easements or rights of way for gas, water, power, sewer, storm drain systems or the like under, over, across or through the Project.

(l) Easements and Rights of Way. Declarant hereby grants and conveys to the Association and each Owner and Resident, as well as their family members, tenants, guests and invitees, the non-exclusive and perpetual right to use and access the roads, trail, and common sidewalks for vehicular and pedestrian traffic. In addition, every Member of the Association shall as

an Owner have the right and non-exclusive easement to use and enjoy the Common Area and Facilities. Such right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following restrictions: (1) The right of the Association to limit the number of guests, occupants and residents; (2) The right of the Association to suspend the voting privilege; and (3) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for the purpose of regulating transportation, maintaining the roadways or providing utilities and other similar or related purposes. During the Period of Declarant's Control, any such dedication or transfer shall be effective only if approved in writing by the Declarant. Each Owner shall be entitled to the exclusive ownership and possession of his Lot, to an undivided percentage of ownership interest in the Common Areas, and to membership in the Association as set forth herein.

(m) Rules and Regulations. The Association, acting through its Management Committee, shall have the power and authority to adopt administrative or house rules and regulations, which shall be binding upon all Owners and Residents, and their family, guests, visitors, invitees, and employees.

(n) Restrictions and Limitations of Use. The use of the Lots is subject to the following limitations and restrictions:

(1) Parties Bound. All provisions of the Project Documents, including without limitation the Declaration, By-Laws, and Rules and Regulations shall be binding upon all Owners, Residents and Permanent Residents, and their family members, guests, visitors, invitees, and employees.

(2) Nuisance. It shall be the responsibility of each Owner and Resident to prevent the creation or maintenance of a nuisance in, on or about the Project. The term "nuisance" includes but is not limited to the following:

a. The development of any unclean, unhealthy, unsightly, or unkempt condition on, in or about his Lot or the Common Areas;

b. The storage of any item, property or thing that causes any Lot or the Common Area to appear to be in an unclean or untidy condition or that will be noxious to the senses;

c. The storage of any substance, thing or material upon any Lot or in the Common Areas that emits any foul, unpleasant or noxious odors, or that causes any noise or other condition that disturbs or might disturb the peace, quiet, safety, comfort, or serenity of the other residents at the Project;

d. The creation or maintenance of any noxious or offensive condition or activity in or about any Lot or the Common Areas;

e. Actions or activities tending to cause embarrassment, discomfort, annoyance, distress or a disturbance to any other residents, their guests or invitees,

particularly if the police or sheriff must be called to restore order;

f. Maintaining any plants, animals, devices or items, instruments, equipment, machinery, fixtures, or things of any sort whose activities or existence in any way is illegal, noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community by other residents, their guests or invitees;

g. Creating or allowing an unreasonable amount of noise or traffic in, on or about any Lot or the Common Area, especially after 10:00 p.m. and before 8:00 a.m.; and

h. Violation of U.C.A., Section 78-38-9 (1999) (i.e., drug houses and drug dealing; gambling; group criminal activity; prostitution; weapons; parties), as it may be amended or supplemented from time to time.

(3) Signs; Unsightly Work and Unkempt Conditions. No "For Sale" or "For Rent" or other signs or banners are permitted in the Common Area or so as to visible from the street, unless approved in writing by the Committee. Activities which might tend to cause disorderly, unsightly, or unkempt conditions shall not be pursued or undertaken on any part of the Project.

(4) Removing Garbage, Dust and Debris. All rubbish, trash, refuse, waste, dust, debris and garbage shall be regularly removed from the Lot and shall not be allowed to accumulate thereon.

(5) Subdivision of a Lot. No Lot shall be subdivided or partitioned.

(6) Firearms, Incendiary Devices and Graffiti. The use of firearms and incendiary devices, or the painting of graffiti, within the Project is prohibited. The term firearms includes but is not limited to all guns, pistols, handguns, rifles, automatic weapons, semi-automatic weapons, BB guns, pellet guns, sling shots, wrist-rockets, blow-dart guns, and other firearms of all types, regardless of size.

(7) Temporary Structures. No Owner or occupant shall place upon any part of the Project any temporary structures including but not limited to tents, trailers, or sheds, without the prior written consent of the Committee.

(8) Trees, Shrubs and Bushes; Maintenance of Proper Sight Distance at Intersections. All property located at or near driveways, entrances, exits, walkways, paths and street intersections or corners shall be landscaped so as to remove any obstructions and to permit safe sight. No fence, wall, hedge, shrub, bush, tree or monument, real or artificial, shall be planted or placed by any Owner or occupant in, on or about the Common Areas without the prior written consent of the Committee. The Management Committee may alter or remove any objects planted or placed in violation of this subsection and shall not be guilty of a trespass.

(9) Energy Conservation Equipment. Except in compliance with U.C.A. Section 17-27-901, as it may be amended from time to time, no solar energy collector panels, other

energy conservation equipment or attendant hardware shall be constructed or installed on the Project, and such installations must be approved by the Management Committee in advance.

(10) Business Use. No Business Use or Trade may be conducted in or from any Lot unless: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the residence; (b) the business activity conforms to all zoning requirements for the Project; (c) the business activity does not involve persons coming onto the Project who do not reside in the Project or door-to-door solicitation of residents of the Project; and (d) the business activity is consistent with the residential character of the Project and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Project, as may be determined in the sole discretion of the Committee. Notwithstanding the above, the leasing of a residence shall not be considered a trade or business within the meaning of this sub-Section.

(11) Storage and Parking of Vehicles. The driving, parking, standing and storing of motor vehicles in, on or about the Project shall be subject to the following:

a. The parking rules and regulations adopted by the Committee from time to time;

b. The parking areas are not designed for Recreational, Oversized, or Commercial Vehicles and the Management Committee has the right to make rules and regulations restricting or prohibiting their use within the Project. Unless otherwise determined by the Management Committee, all such vehicles shall be parked in garages or outside the Project, except for purposes of loading and unloading. Eighteen wheelers may not be parked within the Project.

c. No motor vehicle or trailer, including but not limited to any car, automobile, truck, van, Recreational, Oversized, or Commercial Vehicle or any other transportation device of any kind may be parked or stationed (except for purposes of loading or unloading), in such a manner so as to create an obstacle or potentially dangerous situation, or along any street or road, or in front of any parking amenity, sidewalk, walkway, driving lane, Building or Lot, or in an unauthorized portion of the Common Area.

d. Residents may only park their motor vehicles within their driveways, garages, or in other designated Common Areas.

e. No parking is allowed in "red zones," "fire lanes," or unauthorized areas.

f. Visitors or guests shall park their motor vehicles in Common Areas designated for "guest" or "visitor" parking. Owners, Residents and Occupants shall not park in "guest" or "visitor" spaces.

g. No Owners or Residents shall disassemble, assemble, repair or restore any vehicle of any kind in, on or about any Lot or the Common Area, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility.

h. No motor vehicle shall be parked in such a manner as to inhibit or block access to a Building, driving lane, parking space, driveway, garage, entry, exit, or parking area.

i. All parking areas shall be used solely for the parking of motor vehicles used for personal transportation. Disabled or inoperable vehicles, motor vehicles not currently licensed or registered, or vehicles with more than \$1,000 damage may not be stored in the street, driveway, or other place so as to be visible to the general public or Residents of the Project.

j. No garage may be used or altered so that it parks less than the number of motor vehicles for which it was originally designed.

k. The nature of the intended use of a garage as a parking garage for motor vehicles may not be changed or altered without the prior express written consent of the Management Committee.

l. Vehicles parked in violation of this Declaration or parking Rules and Regulations adopted by the Management Committee may be immobilized, impounded, and towed **WITHOUT ADDITIONAL NOTICE** and at the Owner's sole expense. By virtue of bringing a motor vehicle on to the Property, the driver agrees to indemnify, save and hold the Association, Management Committee and members of the Committee harmless from any loss, damage or claim caused by or arising out of the immobilizing, impounding, or towing of a motor vehicle pursuant hereto.

(12) Bicycles. Bicycles in the Common Areas must be parked or stored in the bicycle racks or storage areas designated by the Management Committee.

(13) Aerials, Antennas, and Satellite Systems. Antennas and satellite dishes shall be prohibited within the Property, except (a) antennas or satellite dishes designed to receive direct broadcast satellite service which are one meter or less in diameter; (b) antennas or satellite dishes designed to receive video programming services via multi point distribution services which are one meter or less in diameter or diagonal measurement; or (c) antennas or satellite dishes designed to receive television broadcast signals ("Permitted Devices") shall be permitted, provided that any such Permitted Device is located within the Lot or another location approved by the Management Committee. Permitted Devices attached to a Building or mounted on the patio, balcony, or deck must extend no higher than the eaves of that portion of the roof of the Dwelling directly in front of such antenna or dish. The Management Committee may adopt rules establishing a preferred hierarchy of alternative locations and requiring screening of all Permitted Devices, so long as such rules do not unreasonably increase the cost of installation, maintenance, or use of the Permitted Device. Anything to the contrary notwithstanding, it is the intent of this document to at all times comply with the applicable federal, state and local laws, and regulations adopted by the FCC – as they may be amended from time to time. **DO NOT INSTALL AN ANTENNA OR SATELLITE DISH OUTSIDE YOUR LOT OR IN THE COMMON AREA WITHOUT THE PRIOR, EXPRESS WRITTEN CONSENT OF THE MANAGEMENT COMMITTEE.** Antennas or Satellite dishes installed by an Owner or resident in violation of this section may be removed by the Management Committee without further notice or warning and at the owner's sole risk and expense.

(14) Window Coverings. No-aluminum foil, newspapers, reflective film coatings, sheets, bedspreads, or any other similar materials may be used to cover the exterior windows of any residential structure on a Lot. Sun shades are not allowed on the exterior of any Building.

(15) Windows. All windows and window units in the Project shall be harmonious, and comparable in size, design and quality so as not to detract from uniformity in appearance and quality of construction.

(16) Pets. No pets, animals, livestock or poultry of any kind shall be bred in, on or about the Project. Up to two (2) domestic pets per Lot are allowed. Pets must be properly licensed and registered by the appropriate governmental agency where required. Pets may not create a nuisance. The following acts may constitute a nuisance: (a) causing damage to the property of anyone other than the pet owner; (b) causing unreasonable fouling of the air by odors; (c) causing unsanitary conditions; (d) defecating on any common area when the feces are not immediately cleaned up by the responsible party; (e) barking, howling, whining or making other disturbing noises in an excessive, continuous or untimely fashion; (f) molesting or harassing passersby by lunging at them or chasing passing vehicles; (g) attacking or threatening to attack people or other domestic animals; (h) otherwise acting so as to bother, annoy or disturb other reasonable residents or interfering with their right to the peaceful and quiet enjoyment of their property; or (i) the mere number of pets maintained creates an offensive or dangerous condition to the health, welfare or safety of other residents. Pets in the Common Area must be in a cage or on a leash and under the control of a responsible person. Pets may not be tied or tethered in the Common Area. The Management Committee may establish Pet Rules and charge a pet deposit and/or a registration fee.

(17) Wildlife. Capturing, trapping or killing wildlife within the Property is prohibited, except (a) in circumstances posing an imminent threat to the safety of persons or pets using the Property; (b) when authorized and supervised by the Management Committee in accordance with a game management program and with the consent of the Declarant as long as it owns any of the Property which it owns.

(18) Vegetation. Activities which materially disturb or destroy the vegetation, wildlife, or air quality within the Property or which result in unreasonable levels of sound or light pollution are prohibited.

(19) Lubricants, Oil and Gas. Disposal of any oil, gas, or lubricants, and the storage or disposal of other hazardous materials (as may be determined in the Management Committee's reasonable discretion and as defined by applicable law) anywhere within the Property is prohibited.

(20) Electronic Transmitters. No electronic or radio transmitter of any kind, other than garage door openers, shall be located or operated in or on the Property without the prior consent of the Management Committee.

(21) Dust or Pollen. Behavior which causes erosion or unreasonable

amounts of dust or pollen is prohibited.

(22) Driveway, Entry, Deck, Patio and Balcony. The Management Committee may adopt reasonable rules to regulate and control the appearance and use of driveways, entries, decks, patios, and balconies within the Project, including by way of illustration but not limitation a regulation limiting items on the patio to "patio furniture"; prohibiting clotheslines and the hanging of clothes and other items over the railings; planters and plants; and the storage of personal property, furnishings, appliances, junk, boxes, furniture, and effects in public view.

(23) Insurance. Nothing shall be done or kept in, on or about any Lot or in the Common Areas which may result in the cancellation of the insurance on the Property or an increase in the rate of the insurance on the Property, over what the Management Committee, but for such activity, would pay.

(24) Laws. Nothing shall be done or kept in, on or about any Lot or Common Areas, or any part thereof, which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body.

(25) Damage or Waste. No damage shall be caused to, or waste of, the Common Area and Facilities by any Owner or Resident, or their family members, guests or invitees; and each Owner and Resident shall indemnify and hold the Management Committee and the other Owners in the Project harmless against all loss resulting from any such damage or waste caused by that Owner or Resident, or their family members, guests or invitees; provided, however, that any invitee of the Declarant shall not under any circumstances be deemed to be an invitee of any other Owner.

(26) Structural Alterations. Except in the case of an emergency repair, no structural alterations, plumbing, electrical or similar work within the Common Area and Facilities shall be done or permitted by any Owner without the prior, express written consent of the Management Committee. Structural alterations within the footprint of the Building or Roof as shown on the Plat Map may be authorized by the unanimous consent of the Management Committee (and governmental agency responsible for the issuing of all building permits, licenses, etc.), and the additional approval of the other Lot Owners shall not be required.

7. Leases. No Owner shall be permitted to lease his Dwelling for short term, transient, hotel, vacation, seasonal or corporate use purposes, which for purposes of this section shall be deemed to be any rental with an initial term of less than six (6) months. Daily or weekly rentals are prohibited. No Owner may lease individual rooms to separate persons or less than his entire Dwelling, including, by way of illustration but not limitation, to domestic help or a caretaker, without written notice to and the written consent of the Management Committee. Other than as stated in this Section, there is no restriction on the right of any Owner to lease or otherwise grant occupancy rights to a Dwelling.

8. Easement -- Support, Maintenance and Repair. There is hereby RESERVED and the Association is hereby GRANTED a non-exclusive easement over, across, through, above and under the Lots, Buildings, and the Common Area for the (a) location and installation of the main gas line or

lines in the Buildings and (b) the operation, regulation, maintenance, repair and replacement of said gas line(s) and other Common Area and Facilities.

9. Liability of Owners and Residents For Damages. Each Owner or Resident shall be liable to the Association, or other Owners or Residents for damages to person or property in the Community caused by his negligence.

10. Encroachments. If any portion of Common Area or a Lot encroaches or comes to encroach upon other Common Area or a Lot as a result of construction, reconstruction, repair, shifting, settling, or movement, an easement for such encroachment is created hereby and shall exist so long as such encroachment exists.

11. Management Committee. The Association shall be managed by a Management Committee comprised of three (3) Lot Owners who shall be duly qualified and elected.

12. Status and General Authority of Committee. After the termination of the Period of Declarant's Control, any instrument executed by the Management Committee that recites facts which, if true, would establish the Committee's power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument. The Association shall, in connection with its exercise of any of the powers delineated below, constitute a legal entity capable of dealing in its Committee name. The Management Committee shall have, and is hereby granted, the following authority and powers:

(a) Access. The Management Committee or Manager shall have the right to have access to each Lot, Building and the Common Areas and Facilities, including the main gas line or lines located within the Buildings: (1) from time to time during reasonable hours and after reasonable notice to the occupant of the Lot being entered, as may be necessary for the maintenance, repair, or replacement of any of the Common Areas and Facilities; and (2) for making emergency repairs necessary to prevent damage to the Common Areas and Facilities or to another Lot or Lots, provided that a reasonable effort is made to provide notice to the occupant of the Lot prior to entry. For purposes of this subsection the term "emergency" means an event or occurrence which threatens to cause substantial and imminent damage to person or property.

(b) Grant Easements. The authority, without the vote or consent of the Owners, Mortgagees, insurers or guarantors of any Mortgage, or of any other person, to grant or create, on such terms as it deems advisable, reasonable permits, licenses, and non-exclusive easements over, under, across, and through the Common Areas for utilities, roads, and other purposes reasonably necessary or useful for the proper maintenance, operation or regulation of the Project.

(c) Execute Documents. The authority to execute and record, on behalf of all Owners, any amendment to the Declaration or Plat Map which has been approved by the vote or consent necessary to authorize such amendment.

(d) Standing. The power to sue and be sued.

(e) Enter Into Contracts. The authority to enter into contracts which in any way concern the Project, so long as any vote or consent necessitated by the subject matter of the agreement has been obtained.

(f) Transfer Interests in Real Property. The power and authority to exchange, convey or transfer any interest in real property, so long as it has been approved by at least seventy-five percent (75%) of the Association Members.

(g) To Add or Purchase Property. The power and authority to purchase, otherwise acquire, and accept title to, any interest in real property, so long as it has been approved by at least seventy-five percent (75%) of the Association Members.

(h) Promulgate Rules. The authority to promulgate such reasonable administrative guidelines, rules, regulations, policies and procedures as may be necessary or desirable to aid the Committee in carrying out any of its functions or to insure that the Project is maintained and used in a manner consistent with applicable law and this Declaration.

(i) Meetings. The authority to establish procedures for the conduct of its meetings, including but not limited to the power to decide what portion of the meeting shall be open or closed to Owners or Residents not on the Committee, to retire to executive session, to regulate record keeping, and to allow, control or prohibit the electronic reproduction (video or audio) of Committee meetings.

(j) Delegation of Authority. The power and authority to delegate its responsibilities over the management and control of the Common Areas and regulation of the Project to a professional manager, reserving the right, power and authority, however, to control and oversee the administration thereof.

(k) Sewer Laterals. Pay all sewer bills.

(l) All other Acts. The power and authority to perform any and all other acts, and to enter into any other transactions which may be reasonably necessary for the Management Committee to perform its functions on behalf of the Owners.

13. Delegation of Management Responsibilities. The Management Committee may delegate some of its management responsibilities to a professional management company, an experienced on-site manager, an independent contractor, through service contracts, or any combination thereof. The Manager may be an employee or an independent contractor. The termination provision of any such contract must not require a termination penalty or any advance notice of any more than sixty (60) days, and no such contract or agreement shall be for a term greater than one (1) year. The Management Committee may also employ general laborers, grounds crew, maintenance, bookkeeping, administrative and clerical personnel as necessary to perform its management responsibilities.

14. Owners Meetings. The Association shall meet at least annually at a time and place set by the Management Committee.

15. Lists of Lot Owners, Eligible Mortgagees, and Eligible Insurers or Guarantors. The Committee shall maintain up-to-date records showing: (a) the name of each person who is an Owner, the address of such person, and the Lot which is owned by him; (b) the name and address of each Resident; (c) the name of each person or entity who is an Eligible Mortgagee, the address of such person or entity, and the Lot which is encumbered by the Mortgage held by such person or entity; and (d) the name of each person or entity who is an Eligible Insurer or Guarantor, the address of such person or entity, and the Lot 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 Lot, either the transferor or transferee shall furnish the Committee with written evidence verifying that the transfer has occurred, that the Deed or other instrument accomplishing the transfer is of record in the office of the County Recorder of Salt Lake County, Utah, and that the transferee has received a copy of the Declaration and By-Laws then in force. The Committee may for all purposes act and rely on the information concerning Lot ownership in its records or, at its option, the records of the county recorder. The address of any Owner shall be deemed to be the address of the Lot owned by such person unless the Committee is otherwise advised in writing.

16. Assumption of Risk. The Association may, but shall not be obligated to, sponsor certain activities or provide facilities designed to promote the health, safety, and welfare of Owners and Residents; there are Common Areas and Facilities and recreational amenities in the Project; in, near, or about the Project there are utility lines or utility substations; there are also improvements of a less significant nature: Notwithstanding anything contained herein or in any of the Project Documents, neither the Association, Management Committee, Members of the Management Committee, Officers of the Association, Manager, nor the Declarant shall be liable or legally responsible for, or in any manner a guarantor or insurer of the health, safety or welfare of any Owner or Resident of any Lot or his family members, tenants, guests, or invitees while at the Project, or for any property of any such Persons. Each such Person by accepting a deed or other document of conveyance to a Lot or coming onto the Property hereby assumes all risks associated with the use and enjoyment of the Project, including negligent acts. No provision of the Project Documents shall be interpreted as creating a duty of the Association, Management Committee, Members of the Management Committee, Officers of the Association, Manager, or the Declarant to protect or further the health, safety, or welfare of any Person(s), even if the funds of the Association are used for any such purpose. Each Owner by virtue of his acceptance of title to his Lot and each other Person having an interest in or lien upon, or making any use of, any portion of the Project (by virtue of accepting such interest or lien or making such use) shall be bound by this Section and shall be deemed to have waived any and all rights, claims, demands, and causes of action against the Association, Management Committee, Members of the Management Committee, Officers of the Association, Manager, and the Declarant, and their employees, agents, contractors, subcontractors, successors, and assigns from or connected with the foregoing items.

17. Capital Improvements. All expenses for Capital Improvements shall be governed by and subject to the following conditions, limitations and restrictions:

(a) Committee Discretion/Expenditure Limit. Any Capital Improvement to the Project which costs ten percent (10%) or less of the Total Annual Budget, and does not alter the nature of the Project, may be authorized by the Management Committee alone (the "Capital

Improvement Ceiling").

(b) Expenditure Limit Without Consent of Owners. Any Capital Improvement, the cost of which will exceed the Capital Improvement Ceiling, must, prior to the commencement of construction, be authorized by at least a majority of the percentage of undivided ownership interest in the Common Area.

(c) Improvements Changing the Nature of the Project. Any Capital Improvement which would materially alter the nature of the Project must, regardless of its cost and prior to being constructed or accomplished, be authorized by at least sixty-seven (67%) percent of the undivided ownership interest in the Common Areas.

18. Recycling Programs. The Management Committee may establish a recycling program and recycling center within the Project, and in such event all occupants of Lots shall support such program by recycling, to the extent reasonably practical, all materials which the Association's recycling program or center is designed to accommodate. The Association may, but shall have no obligation to, purchase recyclable materials in order to encourage participation, and any income received by the Association as a result of such recycling efforts shall be used to reduce Common Expenses.

19. Provision of Services. The Association may provide services and facilities for the Members of the Association and their guests, lessees and invitees. The Association shall be authorized to enter into contracts or other similar agreements with other entities, including Declarant, to provide such services and facilities. The costs of services and facilities provided by the Association may be funded by the Association as a Common Expense. In addition, the Management Committee shall be authorized to charge additional use and consumption fees for services and facilities. By way of example, some services and facilities which may be provided include snow removal, landscape maintenance, pest control service, cable television service, security, caretaker, fire protection, utilities, and similar services and facilities. The Management Committee shall be permitted to modify or cancel existing services or facilities, if any, or to provide additional services and facilities. Nothing contained herein shall be relied upon as a representation as to what services and facilities, if any, will be provided by the Association.

20. View Impairment. Neither the Declarant nor the Association guarantees or represents that any view over and across any property, including any Lot, from adjacent Building will be preserved without impairment. Neither the Declarant nor the Association shall have the obligation to prune or thin trees or other landscaping except as set forth herein. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

21. Relationship with Tax-Exempt Organizations. The Association may create, enter into agreements or contracts with, grant exclusive and/or non-exclusive easements over the Common Area to, or transfer portions of the Common Area to non-profit, tax-exempt organizations, including, but not limited to, organizations that provide facilities and services designed to meet the physical and social needs of older persons, for the benefit of the Project, the Association, its Members and residents. The Association may contribute money, real or personal property, or services to any such entity. Any such contribution shall be a Common Expense of the Association and shall be included

as a line item in the Association's annual budget. For the purposes of this Section, a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code, as may be amended from time to time.

22. The Maintenance Responsibility of the Association. The Association shall maintain, replace, and keep in a state of good repair the following items (collectively "Area of Common Responsibility):

- (a) all Common Area;
- (b) all landscaping, trees, bushes, shrubs, planting beds, flower beds, grass and other plant life in the Common Area and public utility easements;
- (c) all common water service and drainage facilities, including all water features;
- (d) all common arterial sidewalks and walkways;
- (e) all walls and fences which serve as common walls or fences for the Project or which separate any Lot from Common Area, whether or not located on a Lot;
- (f) all landscaping and irrigation systems in the front, side and rear yards;
- (g) all common signage;
- (h) all streets and rights-of-way, and street lights within the Project;
- (i) all roofs and exterior surfaces;
- (j) all foundations, columns, girders, beams, supports, and main walls;
- (k) all driveways, entries, landings, patios, balconies, and decks;
- (l) all parking areas and storage spaces;
- (m) all installations of common utility services, such as power, gas, sewer and water, including the main gas line or lines running through the Buildings;
- (n) all sewer laterals; and
- (o) any other item designated as a common responsibility or responsibility of the Association herein.

23. The Maintenance Responsibility of the Owners. Each Owner shall maintain, repair and replace his Lot, Dwelling Unit, and all other landscaping and physical improvements to his Lot not part of the Common Area of Responsibility (the "Area of Personal Responsibility"). This obligation includes by way of illustration but not limitation all glass, windows, window units, doors,

and door units, subject only to the prior written consent of the Management Committee who is obligated to maintain the integrity of the original architectural design, uniformity of appearance, and quality of construction. Each Owner or Resident shall keep his patio, balcony, deck, driveway, and parking and storage spaces broom clean, tidy, and uncluttered in accordance with the rules and regulations adopted by the Management Committee. In the event the Association shall fail for any reason to discharge its obligations required under the Area of Common Responsibility, then those obligations shall be performed by and be the responsibility of the Owners.

24. Garbage Removal and Snow Removal. The Association shall arrange for garbage pick up and removal. Lot Owners shall place their garbage in suitable plastic bags, sacks or containers and deposit them immediately into the designated dumpsters or garbage receptacles.

25. Standard of Care - Generally. The Property shall be maintained in a usable, clean, functional, safe, healthy, sanitary, attractive, and good condition, consistent with the Community Wide Standard. If a dispute arises between a Lot Owner or a Resident as to the condition of a Lot, the decision of the Management Committee shall be final and conclusive.

26. Standard of Care - Landscaping. All landscaping in the Project shall be maintained and cared for in a manner consistent with the Community Wide Standard and the quality of design and construction originally established by Declarant. Specific guidelines and restrictions on landscaping may be established by the Management Committee from time to time. All landscaping shall be maintained in a neat and orderly condition. Any weeds or diseased or dead lawn, trees, ground cover or shrubbery shall be removed and replaced. All lawn areas shall be neatly mowed and trees, shrubs and bushes shall be properly pruned and trimmed. In a word, all landscaping shall be tasteful, so as not to affect adversely the value or use of any other Lot, or to detract from the uniform design and appearance of the Project.

27. Neglect. If the Committee determines that any Owner has failed or refused to discharge properly his obligation with regard to the maintenance, repair, or replacement of items for which he is responsible hereunder; or that the need for maintenance, repair, or replacement of the Common Area is caused through the willful or negligent act of any Owner, his family, guests, lessees, or invitees, and it is not covered or paid by insurance, in whole or in part, then the Association may, but is not obligated to, provide such maintenance, repair or replacement at the Owner's sole cost and expense, subject to the following:

(a) Notice of Intent to Repair. Except in an emergency situation, the Association shall give the Owner written notice of the Association's intent to provide necessary maintenance, repair, or replacement at Owner's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Committee. The Owner shall have ten (10) days after receipt of notice within which to complete maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within ten (10) days.

(b) Emergency Situation. If the Committee determines that an emergency exists, then notice and the opportunity to cure the default is not necessary.

(c) Optional Repairs. The Association may, but is not obligated to, provide any such maintenance, repair, or replacement in the manner described above.

(d) Costs and Expenses. Such costs as are incurred by the Association in the performance of an item included in the Area of Personal Responsibility shall be added to and become a part of the assessment to which such Owner and Lot is subject, and shall be secured by a lien against his Lot regardless of whether a notice of lien is filed.

28. Changes to Areas of Personal or Common Responsibility. The Management Committee may, in its sole discretion, add items to or subtract items from the Areas of Personal or Common Responsibility upon at least thirty (30) days prior written notice to the Lot Owners.

29. Alterations to the Common Area. Anything to the contrary notwithstanding and until the termination of the Period of Declarant's Control, the Declarant may make changes to the Common Area without the consent of either the Association or the Management Committee; provided, however, no Owner or resident may at any time modify the drainage patterns or systems, landscaping, or make any structural alterations, modifications, changes or improvements to the Common Area or Facilities, including but not limited to the construction or installation of any additions, and the extension or enclosure of any existing structures (e.g., fencing, decks, patios, walkways or sheds, etc.) not shown on the approved plans and specifications, without the prior written consent of the Management Committee.

30. Declarant's Rights to Change Design and Construction. The Declarant may make changes to the design and construction of the improvements located in or on the Common Areas without the consent of the Committee or Members of the Association; provided, however, no Owner or Resident may make any structural alterations to the Common Area without the prior written consent of the Committee.

31. Common Expenses. Each Owner shall pay his Assessments subject to and in accordance with the procedures set forth below.

(a) Declarant. Anything to the contrary notwithstanding, the Declarant shall not be obligated to pay Assessments on any Lot owned by it until such time as the earlier of the following events occurs: (1) the Period of Declarant's Control ends; (2) a certificate of permanent occupancy is issued and the Lot is sold or rented; or (3) Declarant elects in writing to pay the Assessments, whichever first occurs.

(b) Purpose of Common Area Expenses. The Assessments provided for herein shall be used for the general purpose of operating the Project, promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners and residents, including the maintenance of any real and personal property owned by the Association, and regulating the Community, all as may be more specifically authorized from time to time by the Committee.

(c) Budget. At least thirty (30) days prior to the Annual Homeowners Meeting, the Management Committee shall prepare and deliver to the Owners a proposed Budget which:

(1) Itemization. Shall set forth an itemization of the anticipated Common Expenses (including that portion earmarked for the reserve account(s)) for the twelve (12) month calendar year, commencing with the following January 1.

(2) Basis. Shall be based upon advance estimates of cash requirements by the Management Committee to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Areas and regulation of the Association, which estimate shall include but is not limited to expenses of management, grounds maintenance, taxes and special assessments, premiums for all insurance which the Committee is required or permitted to maintain, common lighting and heating, water charges, trash collection, sewer charges, sewer maintenance costs, carpeting, painting, repairs and maintenance of the Common Areas and replacement of those elements of the Common Areas that must be replaced on a periodic basis, wages for Management Committee employees, legal and accounting fees, any deficit remaining from a previous period; the creation of a reasonable contingency reserve, surplus or sinking fund, Capital Improvement reserve, and other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under and by reason of this Declaration. Until the Project is completed, and all Phases are added, this estimate may need to be adjusted periodically as each new Phase is completed.

(d) Apportionment. The common profits, losses and voting rights of the Project shall be distributed among, and the common expenses shall be charged to, the Lot Owners equally and uniformly.

(e) Approval of Budget and Assessments. The proposed Budget and the Assessments shall become effective unless disapproved at the Annual Meeting by a vote of at least a majority of the percentage of ownership interest in the Common Areas. Notwithstanding the foregoing, however, if the membership disapproves the proposed budget and Assessments or the Management Committee fails for any reason to establish the Budget and Assessments for the succeeding year, then and until such time as a new budget and new Assessment schedule shall have been established, the Budget and the Assessments in affect for the then current year shall continue for the succeeding year.

(f) Payment of Assessments. The Management Committee has the sole authority and discretion to determine how and when the annual Assessments are paid.

(g) Personal Obligation of Owner. Owners are liable to pay all Assessments assessed and Additional Charges; provided, however, no first mortgagee or beneficiary under a first deed of trust (but not the Seller under a uniform real estate contract, land sales contract, or other similar instrument), who obtains title to a Lot pursuant to the remedies provided in the mortgage or trust deed shall be liable for unpaid Assessments which accrued prior to the acquisition of title. For purposes of this Section, the term "Owner" shall mean and refer jointly and severally to: (1) the Owner of both the legal and equitable interest in any Lot; (2) the owner of record in the offices of the County Recorder of Salt Lake County, Utah; and (3) both the Buyer and Seller under any executory sales contract or other similar instrument.

(h) Equitable Changes. If the aggregate of all monthly payments on all of the

Lots is too large or too small as a result of unanticipated income or expenses, the Committee may from time to time effect an equitable change in the amount of said payments, but, without the prior approval of a majority of the percentage of ownership interest in the Common Area, not greater than fifteen (15%) percent of the Assessment in any calendar year. Owners shall be given at least thirty (30) days written notice of any changes.

(i) Dates and Manner of Payments. The dates and manner of payment shall be determined by the Committee.

(j) Reserve Account(s). The Management Committee shall establish and maintain a Reserve Account or accounts to pay for unexpected operating expenses and capital improvements. The Reserve Account or accounts shall be funded out of regular Assessments, Special Assessments (if necessary) and the contributions from the Working Capital Fund. The Committee shall dedicate a portion of the monthly Assessment for the Reserve Account or accounts.

(k) Capital Asset Table. The Management Committee shall establish and update at least annually a Capital Asset Table which shall list each major capital asset in the Project, such as roads, roofs, building exteriors, parking amenities, sidewalks, driveways, landscaping, and recreational amenities, each item's expected useful life, the present cost of replacement, the estimated cost to replace the item at the end of its useful life, the percentage and amount of the Assessment currently set aside in the Reserve Account to replace the item at the end of its useful life, and the amount of money currently set aside in the Reserve Account for the replacement of the item.

(l) Analysis Report. The Management Committee shall prepare and update at least annually a written Reserve Account Analysis, and make the report(s) available to the Owners at the annual meeting of the Association.

(m) Statement of Assessments Due. Upon written request, the Committee shall furnish to any Owner a statement of Assessments due, if any, on his Lot. Failure to provide the certificate within ten (10) days after a written request is received by the Secretary shall be deemed conclusive evidence that all Assessments are paid current. The Association may require the advance payment of a processing charge not to exceed \$15.00 for the issuance of such certificate.

(n) Superiority of Assessments. All Assessments and liens created to secure the obligation to pay Assessments are superior to any homestead exemptions to which an Owner may be entitled which, insofar as it adversely affects the Association's lien securing unpaid Assessments, each Owner, by accepting a deed or other document of conveyance to a Lot, hereby subordinates and waives.

32. Special Assessments. In addition to the other Assessments authorized herein, the Association may levy special assessments in any year, subject to the following:

(a) Committee Based Assessment. So long as the special assessment does not exceed the sum of Five Hundred and 00/100ths Dollars (\$500.00) (the "Special Assessment Limit") per Lot in any one fiscal year, the Committee may impose the special assessment without any additional approval.

(b) Association Approval. Any special assessment which would exceed the Special Assessment Limit shall be effective only if approved by a majority of the members of the Association. The Committee in its discretion may allow any special assessment to be paid in installments.

33. Benefit Assessments. If an Owner has the choice to accept or reject the benefit, then the Management Committee shall have the power and authority to assess an Owner in a particular area as follows:

(a) Benefit only To Specific Lot. If the expense benefits less than all of the Lots, then those Lots benefited may be specifically assessed, and the specific assessment shall be equitably apportioned among those Lots according to the benefit received.

(b) Unequal or Disproportionate Benefit. If the expense benefits all Lots, but does not provide an equal benefit to all Lots, then all Lots shall be specifically assessed, but the specific assessment shall be equitably apportioned among all Lots according to the benefit received.

Failure of the Committee to exercise its authority under this Section shall not be grounds for any action against the Association or the Committee and shall not constitute a waiver of the Committee's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Committee has not previously exercised its authority under this Section.

34. Individual Assessments. Individual Assessments shall be levied by the Committee against a Lot and its Owner to reimburse the Association for: (a) administrative costs and expenses incurred by the Committee in enforcing the Project Documents; (b) costs associated with the maintenance, repair or replacement of Common Area for which the Lot Owner is responsible; (c) any other charge, fee, fine, dues, expense, or cost designated as an Individual Assessment in the Project Documents or by the Management Committee; and (d) attorneys' fees, interest, and other charges relating thereto as provided in this Declaration.

35. Collection of Assessments. The Owners must pay their Assessments in a timely manner. Payments are due in advance on the first of the month. Payments are late if received after the 10th day of the month in which they were due.

(a) Delinquent Accounts. Any Assessment not paid when due shall be deemed delinquent and a lien securing the obligation shall automatically attach to the Lot, regardless of whether a written notice is recorded.

(b) Late Fees and Default Interest. A late fee of twenty-five dollars (\$25.00) or five percent (5%) of the delinquent amount, whichever is greater, shall be assessed on all tardy payments. Simple interest at the rate of one and one-half percent (1.5%) per month shall accrue on all delinquent accounts.

(c) Lien. If any Lot Owner fails or refuses to make any payment of any Assessment or his portion of the Common Expenses when due, that amount shall constitute a lien on

the interest of the Owner in the Property, and upon the recording of notice of lien by the Manager, Management Committee or their designee it is a lien upon the Owner's interest in the Property prior to all other liens and encumbrances, recorded or unrecorded, except: (1) tax and special assessment liens on the Lot in favor of any assessing unit or special improvement district; and (2) encumbrances on the interest of the Owner recorded prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.

(d) Foreclosure of Lien and/or Collection Action. If the Assessments remain unpaid, the Association may, as determined by the Committee, institute suit to collect the amounts due and/or to foreclose the lien.

(e) Personal Obligation. Each Owner, by acceptance of a deed or as a party to any other type of conveyance, vests in the Association or its agents the right and power to bring all actions against him personally for the collection of the charges as a debt or to foreclose the lien in the same manner as mechanics liens, mortgages, trust deeds or encumbrances may be foreclosed.

(f) No Waiver. No Owner may waive or otherwise exempt himself or herself from liability for the Assessments provided for herein, including but not limited to the non-use of Common Areas or the abandonment of his Lot.

(g) Duty to Pay Independent. No reduction or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association or Committee to take some action or perform some function required to be taken or performed by the Association or committee under this Declaration or the By Laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay Assessments being a separate and independent covenant on the part of each Owner.

(h) Foreclosure of Lien as Mortgage or Trust Deed. The lien for nonpayment of Assessments may be enforced by sale or foreclosure of the Owner's interest therein by the Committee. The sale or foreclosure shall be conducted in the same manner as foreclosures in deeds of trust or mortgages or in any other manner permitted by law. In any foreclosure or sale, the Owner shall pay the costs and expenses of such proceedings, including but not limited to the cost of a foreclosure report, reasonable attorney's fees, and a reasonable rental for the Lot during the pendency of the foreclosure action. The Association in the foreclosure action may require the appointment of a receiver to collect the rental without regard to the value of the mortgage security. The Committee may bid for the Lot at foreclosure or other sale and hold, lease, mortgage, or convey the same.

(i) Appointment of Trustee. If the Committee elects to foreclose the lien in the same manner as foreclosures in deeds of trust, then the Owner by accepting a deed to the Lot hereby irrevocably appoints the attorney of the Association, provided he is a member of the Utah State Bar, as Trustee, and hereby confers upon said Trustee the power of sale set forth with particularity in Utah Code Annotated, Section 57-1-23 (1953), as amended. In addition, Owner hereby transfers in trust to said Trustee all of his right, title and interest in and to the real property for the purpose of securing his performance of the obligations set forth herein.

(j) Attorney-in-Fact. Each Owner by accepting a deed to a Lot hereby irrevocably appoints the Association as his attorney-in-fact to collect rent from any person renting his Lot, if the Lot is rented and Owner is delinquent in his Assessments. Rent due shall be paid directly to the Association, upon written demand, until such time as the Owner's Assessments are current; and the Owner shall credit the Renter, against rent due, for the amount of money paid to the Association.

36. Liability of Management Committee. The Association shall indemnify every officer and member of the Committee against any and all expenses, including but not limited to attorney's fees reasonably incurred by or imposed upon any officer or member of the Committee in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Committee) to which he may be a party by reason of being or having been an officer or member of the Committee. The officers and members of the Committee shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers and members of the Committee shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or members of the Committee may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and member of the Committee free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall be exclusive of any other rights to which any officer or member of the Committee, or former officer or member of the Committee, may be entitled. The Association shall, as a common expense, maintain adequate general liability and officer's and director's insurance coverage to fund this obligation, if such insurance is reasonably available.

37. Insurance. The Manager, Management Committee or Association shall obtain insurance against loss or damage by fire and other hazards for: (a) all Common Areas and Facilities; and (b) all Buildings that contain more than one Unit, including any improvement which is a permanent part of a Building. The insurance coverage shall be written on the property in the name of the Manager, Management Committee or Association, as trustee for each of the Unit Owners in the percentages established in this Declaration. The insurance premiums shall be a Common Expense. This Section is without prejudice to the right of each Unit Owner to insure his own Unit for his benefit. The Manager, Management Committee or Association shall satisfy at least the following minimum requirements:

(a) Property Insurance. Blanket property insurance using the standard "Special" or "All Risk" building form. Loss adjustment shall be based upon replacement cost. For purposes of this sub-section, the term "casualty insurance" shall not mean or refer to "earthquake" or other special risks not included in the standard "planned unit development" casualty policy. This additional coverage may be added by the Committee as it deems necessary in its best judgment and in its sole discretion.

(b) Flood Insurance. If any part of the Project's improvements are in a Special Flood Hazard Area -- which is designated as A, AE, AH, AO, A1-30, A-99, V, VE, or V1-30 on a Flood Insurance Rate Map (FIRM) -- the Association shall obtain a "master" or "blanket" policy of flood insurance and provide for the premiums to be paid as a common expense. The policy should

cover any common element buildings and any other common property. The Lot Owner may also be required to purchase an individual policy. The amount of flood insurance should be at least equal to the lesser of 100% of the insurable value of the facilities or the maximum coverage available under the appropriate National Flood Insurance Administration program.

(c) Liability Insurance. A public liability policy covering the Common Area, sewer laterals, including the backup of sewer laterals, the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents. The public liability policy shall have at least a One Million (\$1,000,000) Dollar single person limit as respects bodily injury and property damage, a Two Million (\$2,000,000) Dollar limit per occurrence, if reasonably available, and a One Million (\$1,000,000) Dollar minimum property damage limit. If possible, the policy should be written on the comprehensive form and shall include non-owned and hired automobile liability protection.

(d) Directors and Officers Insurance. A director's and officer's liability or errors and omissions policy, if reasonably available, with at least One Million (\$1,000,000) Dollars in coverage.

(e) Fidelity Bond. A separate fidelity bond in a reasonable amount to be determined by the Management Committee to cover all non-compensated officers as well as all employees for theft of Association funds, subject to the following:

(1) Agents. Where the Committee or the Association has delegated some or all of the responsibility for the handling of funds to a management agent, such bonds are required for the management agent's officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Committee or the Association.

(2) Amount of Coverage. The total amount of fidelity bond coverage required shall be based upon the Committee's best business judgment, but shall not be less than the estimated maximum amount of funds, including reserve funds, in the custody of the Committee, the Association, or the management agent as the case may be, at any given time during the term of each bond. Nevertheless, in no event may the amount of such bonds be less than a sum equal to three (3) months' aggregate assessments on all Lots, plus reserve funds.

(3) Quality of Coverage. The bonds required shall meet the following additional requirements: (a) they shall name the Committee, the Owners Association, and the Property Manager as obligee; (b) if the insurance contract or bond excludes coverage for damages caused by persons serving without compensation, and may use that exclusion as a defense or reason not to pay a claim, the insurance company shall, if possible, be required to waive that exclusion or defense; (c) the premiums on all bonds required herein for the Committee and the Association (except for premiums on fidelity bonds maintained by a management agent for its officers, employees and agents) shall be paid by the Committee or the Association as part of the Common Expenses; and (d) the bonds shall provide that they may not be canceled or substantially modified, including cancellation for nonpayment of premium, without at least ten days' prior written notice to the Committee and the Association, to any Insurance Trustee, and to each servicer of loans on behalf of any Mortgagee, and FNMA.

(f) Earthquake Insurance shall not be required unless requested by at least seventy five percent (75%) of the Members of the Association.

(g) Miscellaneous Items. The following provisions shall apply to all insurance coverage:

(1) Quality of Carrier. A "B" or better general policyholder's rating or a "6" or better financial performance index rating in Best's Insurance Reports, an "A" or better general policyholder's rating and a financial size category of "VIII" or better in Best's Insurance Reports -- International Edition, an "A" or better rating in Demotech's Hazard Insurance Financial Stability Ratings, a "BBBq" qualified solvency ratio or a "BBB" or better claims-paying ability rating in Standard and Poor's Insurers Solvency Review, or a "BBB" or better claims-paying ability rating in Standard and Poor's International Confidential Rating Service -- if the carrier is issuing a master policy or an insurance policy for the common elements in the Project.

(2) The Insured. The name of the insured under each policy required to be maintained hereby shall be set forth therein substantially as follows: "Association of Lot Owners of CHANDLER CROSSING AT QUARRY BEND, for the use and benefit of the individual Owners."

(3) Designated Representative. The Association may designate an authorized representative of the Association, including any Insurance Trustee with whom the Association has entered into an Insurance Trust Agreement, or any successor to such Trustee, for the use and benefit of the individual Owners.

(4) Beneficiary. In any policy covering the entire Project, each Owner and his Mortgagee, if any, shall be beneficiaries of the policy in an amount equal to the Owner's percentage of undivided Ownership interest in the Common Areas and Facilities.

(5) Certificate of Insurance. Evidence of insurance shall be issued to each Owner and Mortgagee upon request.

(6) Mortgage Provisions. Each policy shall contain a standard mortgage clause or its equivalent and shall provide that the policy may not be canceled or substantially modified without at least ten (10) days prior written notice to the Association and to each Mortgagee.

(7) Required Policy Provisions. Each insurance policy shall contain at least the following additional miscellaneous items: (a) a waiver of the right of a subrogation against Owners individually; and (b) a provision that the insurance is not prejudiced by any act or neglect of any individual Owner.

(8) Deductible. The deductible on a claim made against the Association's Property Insurance Policy shall be paid for by the party who would be liable for the loss, damage, claim or repair in the absence of insurance, and in the event of multiple responsible parties, the loss shall be allocated in relation to the amount each party's responsibility bears to the total. Provided, however, if the loss is caused by an act of god or nature, or by an element beyond the control of the

Association, then the Association shall be responsible for and pay the deductible.

(9) Individual Insurance. Each Owner and Resident shall purchase and maintain adequate liability and property insurance on his Lot, personal property and contents; provided, however, no Owner shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount which the Association, on behalf of all the Owners and their mortgagees, may realize under any insurance policy which the Association may have in force on the Property at any particular time.

(10) Primary Coverage. The insurance coverage of an Owner shall, in the event the Association also has insurance covering the loss, be primary and the insurance of the Association shall be secondary.

(11) Prompt Repair. Each Owner further covenants and agrees that in the event of any partial loss, damage or destruction of his Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction.

(12) Disbursement of Proceeds. Proceeds of insurance policies shall be disbursed to repair promptly and reasonably the damages. Any proceeds remaining thereafter shall be placed in the Capital Improvement Reserve Account and retained by and for the benefit of the Association. This is a covenant for the benefit of the Association and any Mortgagee of a Lot, and may be enforced by them.

(13) Special Endorsements. Each policy shall also contain or provide those endorsements commonly purchased by other similarly situated homeowners associations in the county, including but not limited to a guaranteed replacement cost endorsement under which the insurer agrees to replace the insurable property regardless of the cost, or a Replacement Cost Endorsement under which the insurer agrees to pay up to 100% of the property's insurable replacement cost, but no more, and, if the policy includes a coinsurance clause, an Agreed Amount Endorsement which waives the requirement for coinsurance; an Inflation Guard Endorsement when it can be obtained, a Building Ordinance or Law Endorsement, if the enforcement of any building, zoning or land-use law will result in loss or damage, increased cost of repairs or reconstruction, or additional demolition and removal costs, and increased costs of reconstruction; Steam Boiler and Machinery Coverage Endorsement if the Project has any central heating or cooling.

(14) Restrictions on Policies. No insurance policy shall be maintained where (a) under the term of the carrier's charter, By-Laws, or policy, contributions may be required from, or assessments may be made against, an Owner, a borrower, a Mortgagee, the Management Committee, the Association, FNMA, or the designee of FNMA; (b) by the terms of the Declaration, By-Laws, or policy, payments are contingent upon action by the carrier's board of directors, policyholder, or member; or (c) the policy includes any limited clauses (other than insurance conditions) which could prevent the party entitled (including, without limitation, the Committee, the Association, an Owner, FNMA, or the borrowers) from collecting insurance proceeds.

(15) Right to Adjust Claims. The Management Committee may adjust claims and is hereby granted the right to refuse to submit the claim of a Lot Owner or Resident if: (a)

the submittal threatens to cancel the Association's insurance coverage or to substantially increase its premiums, (b) the claim occurred on the Lot of the claimant or the claim was caused by an item under claimant's control, the negligence of the claimant or his failure to perform a maintenance duty required hereby, and (d) it is probable that the claim is covered by the claimant's insurance. The Management Committee may require that the claim be submitted first to the insurance carrier of the claimant and it be formally and unconditionally rejected or denied by his insurer in writing.

(16) Intent. The foregoing provisions shall not be construed to limit the power or authority of the Association, Committee or Owners to obtain and maintain insurance coverage, in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Management Committee or Association may deem appropriate from time to time.

38. Destruction, Condemnation, and Obsolescence. The following provisions shall apply with respect to the destruction, condemnation, or obsolescence of the Project.

(a) Definitions. Each of the following terms shall have the meaning indicated:

(1) "Substantial Destruction" shall exist whenever, as a result of any damage or destruction to the Project or any part thereof, the excess of the estimated cost of Restoration over the funds available is twenty five percent (25%) percent or more of the estimated restored value of the Project.

(2) "Partial Destruction" shall mean any other damage or destruction to the Project or any part thereof which does not constitute Substantial Destruction.

(3) "Substantial Condemnation" shall exist whenever a complete taking of the Project or a taking of part of the Project has occurred under eminent domain or by grant or conveyance in lieu of condemnation, and the excess of the estimated cost of Restoration over the funds available is twenty five (25%) percent or more of the estimated restored value of the Project.

(4) "Partial Condemnation" shall mean any other taking by eminent domain or grant or conveyance in lieu thereof which does not constitute Substantial Condemnation.

(5) "Substantial Obsolescence" shall exist whenever the Project or any part thereof has reached such a state of obsolescence or disrepair that the excess of the estimated cost of Restoration over the funds available is twenty five percent (25%) percent or more of the estimated restored value of the Project.

(6) "Partial Obsolescence" shall mean any state of obsolescence or disrepair which does not constitute Substantial Obsolescence.

(7) "Restored Value" shall mean the fair market value of the Project after Restoration as determined by an MAI or other qualified appraisal.

(8) "Estimated Cost of Restoration" shall mean the estimated costs of restoring the Project to its former condition.

(9) "Available Funds" shall mean any proceeds of insurance, condemnation awards, payments in lieu of condemnation, and any uncommitted funds of the Management Committee or Association. Available Funds shall not include that portion of insurance proceeds legally required to be paid to any party other than the Association, including a mortgagee, or that portion of any condemnation award or payment in lieu of condemnation payable to the Owner or Mortgagee for the condemnation or taking of the Lot in which they are interested.

(b) Determination by Committee. Upon the occurrence of any damage or destruction to the Project or any part thereof, or upon a complete or partial taking of the Project under eminent domain or by grant or conveyance in lieu thereof, the Committee shall make a determination as to whether the excess of Estimated Costs of Restoration over Available Funds is twenty-five percent (25%) or more of the estimated Restored Value of the Project. In addition, the Committee shall, from time to time, review the condition of the Project to determine whether Substantial Obsolescence exists. In making such determinations the Committee may retain and rely upon one or more qualified appraisers or other professionals.

(c) Restoration of the Project. Restoration of the Project shall be undertaken by the Committee promptly without a vote of the Owners in the event of Partial Destruction, Partial Condemnation, or Partial Obsolescence and shall also be undertaken in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence unless the failure to make Restoration is consented to by Owners collectively holding at least sixty-seven (67%) percent of the Project's undivided Ownership interest and is further consented to by Eligible Mortgagees holding Mortgages on Lots which have appurtenant at least fifty-one (51%) percent of the undivided ownership interest in the Common Areas and Facilities which is then subject to Mortgages held by Eligible Mortgagees.

(d) Notices of Destruction or Obsolescence. Within thirty (30) days after the Committee has determined that Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence exists, it shall send to each Owner and Eligible Mortgagee a written description of the destruction, condemnation, or state of obsolescence involved, shall take appropriate steps to ascertain the preferences of the Eligible Mortgagees concerning Restoration, and shall, with or without a meeting of the Owners (but in any event in accordance with the applicable provisions of this Declaration), take appropriate steps to determine the preferences of the Owners regarding Restoration.

(e) Excess Insurance. In the event insurance proceeds, condemnation awards, or payments in lieu of condemnation actually received by the Committee or Association exceed the cost of Restoration when Restoration is undertaken, the excess shall be paid and distributed to the Owners in proportion to their respective undivided interests in the Common Areas. Payment to any Owner whose Lot is the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.

(f) Inadequate Insurance. If the cost of Restoration exceeds Available Funds, the Management Committee may elect to make a special assessment in accordance with Article III, Section 21 above to pay for the deficiency.

(g) Reallocation in Event of Partial Restoration. In the event that all or any portion of one or more Lots will not be the subject of Restoration (even though the Project will continue as a planned unit development) or is taken in a condemnation proceeding or pursuant to any agreement in lieu thereof, the undivided Ownership interest in the Common Areas and Facilities shall be immediately reallocated to the remaining Lots.

(h) Sale of Project. Unless Restoration is accomplished as set forth above, the Project shall be sold in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence. In the event of such sale, ownership under this Declaration and the Plat Map shall terminate and the proceeds of sale and any Available Funds shall be distributed by the Committee to the Owners in proportion to their respective undivided interests in the Common Areas. Payment to any Owner whose Lot is then the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.

(i) Authority of Committee to Represent Owners in Condemnation or to Restore or Sell. The Committee, as attorney-in-fact for each Owner, shall represent all of the Owners and the Association in any condemnation proceeding or in negotiations, settlements, and agreements with the condemning authority for the acquisition of all or any part of the Common Areas and Facilities.

(j) Settlement Proceeds. The award in any condemnation proceeding and the proceeds of any settlement related thereto shall be payable to the Association for the use and benefit of the Owners and their mortgagees as their interests may appear.

(k) Restoration Power. The Committee, as attorney-in-fact for each Owner, shall have and is hereby granted full power and authority to restore or to sell the Project and each Lot therein whenever Restoration or sale, as the case may be, is undertaken as hereinabove provided.

(l) Right of Entry. Such authority shall include the right and power to enter into any contracts, deeds or other instruments which may be necessary or appropriate for Restoration or sale, as the case may be.

(m) Termination of Legal Status. Any action to terminate the legal status of the Project after Substantial Destruction or Condemnation occurs shall be agreed to by Lot Owners who represent at least sixty-seven (67%) percent of the total allocated votes in the Association and by Eligible Mortgage holders who represent at least fifty-one (51%) percent of the votes of the Lots that are subject to mortgages held by eligible holders.

The termination of the legal status of the Project for reasons other than Substantial Destruction or Condemnation of the property shall be agreed to by Eligible Mortgage holders that represent at least sixty-seven (67%) percent of the votes of the mortgaged Lots. However, implied approval may be assumed when an Eligible Mortgage holder fails to submit a response to any written proposal for an amendment within thirty (30) days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested.

39. Consent in Lieu of Vote. In any case in which this Declaration requires the vote of an

Owner for authorization or approval of an act or a transaction, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Lots which collectively hold the required percentages, subject to the following conditions:

(a) Sixty-Day Limit. All necessary consents must be obtained prior to the expiration of sixty (60) days from the time the first written consent is obtained; and

(b) Change In Ownership. Any change in Ownership of a Lot which occurs after consent has been obtained from the Owner having an interest therein shall not be considered or taken into account for any purpose.

40. Mortgagee Protection. Nothing herein contained, and no violation of these covenants, conditions and restrictions, shall invalidate or impair the lien of any mortgage or deed of trust, given in good faith and for value. Mortgagees are excluded from any leasing or rental restrictions when obtaining or after obtaining a Lot in foreclosure. The lien or claim against a Lot for unpaid Assessments levied by the Management Committee or by the Association pursuant to this Declaration shall be subordinate to any Mortgage recorded on or before the date such Assessments become due. In addition:

(a) Effects of Voluntary and Involuntary Sale. The lien or claim against a Lot for such unpaid Assessments shall not be affected by any sale or transfer of such Lot, except that a sale or transfer pursuant to a foreclosure of the Mortgage affecting such Lot or the exercise of a power of sale available thereunder shall extinguish any debt payable prior to such sale or transfer. Nevertheless, any such unpaid Assessments which are extinguished in accordance with the foreclosure or power of sale shall not relieve the purchaser or transferee of such Lot from liability for the lien of any Assessments becoming due thereafter.

(b) Books and Records Available for Inspection. The Committee or the Association shall make available to the Owners, to Mortgagees, and lenders, and to holders, insurers, or guarantors of any Mortgage current copies of the Declaration, By-Laws, and administrative rules and regulations concerning the Project, as well as the books, records, and financial statements of the Committee and the Association. The term "Available," as used in the Paragraph, shall mean available for reasonable inspection upon request during normal business hours or under other reasonable circumstances. The Association shall have the right to recover its photocopying and service charges incurred in making the inspection and photocopying available.

(c) Right to Financial Statement. The holder, insurer or guarantor of any Mortgage shall be entitled, upon written request, to a financial statement for the immediately preceding fiscal year. Any financial statement requested pursuant hereto shall be furnished to the requesting party within a reasonable time following such request.

(d) Management Contracts. Any agreement for professional management of the Project, and any contract for goods or services, or any lease which is entered into by the Management Committee shall provide, or be deemed to provide hereby, that:

(1) Either party may terminate the contract with cause upon at least thirty

(30) days prior written notice to the other party; and

(2) No contract may be for an initial term greater than one (1) year.

(e) Eligible Mortgagee Designation. Upon written request to the Committee or the Association by the holder, insurer, or guarantor of a Mortgage (which request identifies the name and address of such holder, insurer or guarantor and the Lot Number or address of the property encumbered by the Mortgage held or insured by such holder, insurer, or guarantor), such holder insurer, or guarantor shall be deemed thereafter to be an "Eligible Mortgagee" or "Eligible Insurer" or "Eligible Guarantor," as the case may be, shall be included on the appropriate lists maintained by the Association, and shall be entitled to timely written notice of any of the following:

(1) Condemnation Loss or Award. Any condemnation loss or any casualty loss which affects a material portion of the Project or any Lot on which there is a Mortgage held, insured, or guaranteed by such Eligible Insurer or Guarantor.

(2) Delinquency. Any delinquency in the payment of Assessments owed by an Owner of a Lot subject to a Mortgage held, insured or guaranteed by such Eligible Insurer or Guarantor, which delinquency remains uncured for a period of sixty (60) days.

(3) Lapse of Insurance. Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Committee or the Association.

(4) Consent Required. Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees.

41. Amendment. Anything to the contrary notwithstanding, while the Declarant is in control of the Association and prior to the termination of the Period of Declarant's Control, the Declarant may amend the Declaration or Plat Map without any additional consent or approval required. After transition, the affirmative vote of at least sixty-seven percent (67%) of the undivided ownership interest in the Common Areas shall be required and shall be sufficient to amend the Declaration or the Plat Map. Any amendment so authorized shall be accomplished through the recordation of an instrument executed by the Management Committee. In such instrument the Committee shall certify that the vote required by this Section for amendment has occurred, and, if approval of a specified percentage of Eligible Mortgagees is required for such amendment, that such approval has been obtained. The foregoing right of amendment shall, however, be subject to the following:

(a) Consent of Eligible Mortgagee. The consent of Eligible Mortgagees holding at least sixty-seven percent (67%) of the undivided ownership interest in the Common Areas shall be required for any amendment which would terminate the legal status of the Project; and the consent of Eligible Mortgagees holding at least fifty-one (51%) percent of the undivided ownership interest in the Common Areas shall be required to add to or amend any material provision of this Declaration or the Plat Map which establishes, provides for, governs, or regulates any of the following, which are considered as "material":

- (1) voting rights;
- (2) increases in assessments that raise the previously assessed amount by more than twenty-five (25%) percent, assessment liens, or the priority of assessments liens;
- (3) reduction in reserves for maintenance, repair, and replacement of the Common Areas;
- (4) responsibility for maintenance and repairs;
- (5) reallocation of interests in the Common Areas, or rights to their use;
- (6) redefinition of any Lot boundaries;
- (7) convertibility of Lots into Common Areas or vice versa;
- (8) expansion or contraction of the project, or the addition, annexation, or withdrawal of property to or from the Project;
- (9) hazard or fidelity insurance requirements;
- (10) imposition of any restrictions on the leasing of Lots;
- (11) imposition of any restrictions on a Lot Owner's right to sell or transfer his Lot;
- (12) a decision by the Association of fifty (50) or more Lots to establish self-management if professional management had been required previously by the Project Documents or by an Eligible Mortgage holder;
- (13). Restoration or repair of the Project (after damage or partial condemnation) in a manner other than that specified in the documents; or
- (14). any provisions that expressly benefit mortgage holders, insurers or guarantors.

Any addition or amendment shall not be considered material for purposes of this Paragraph (a) if it is for clarification only or to correct a clerical error.

Notice of any proposed amendment to any Eligible Mortgagee to whom a written request to approve an addition or amendment to this Declaration or the Plat Map is required shall be mailed postage prepaid to the address for such Mortgagee shown on the list maintained by the Association. Any Eligible Mortgagee who does not deliver to the Management Committee or the Association a

negative response to the notice of the proposed amendment within thirty (30) days from the date of such mailing shall be deemed to have approved the proposal.

The foregoing consent requirements shall not be applicable to amendments to this Declaration and the Plat Map or the termination of the legal status of the Project as a Planned Unit Development if such amendments or such termination are made or accomplished in accordance with the provisions of this Declaration regarding Condemnation or Substantial Obsolescence.

42. Declarant's Sales Program. Anything to the contrary notwithstanding, for so long as Declarant continues to own any of the Lots, the following provisions shall be deemed to be in full force and effect, none of which shall be construed so as to relieve the Declarant from any obligations of an Owner to pay Assessments, except as herein otherwise provided, as to each Lot owned by Declarant in accordance with the Declaration. Until the Declarant has sold all of its Lots or three years, whichever first occurs (the "Sale's Events Period"), neither the Owners, the Association nor the Committee shall interfere with the completion of improvements and sale of all remaining Lots, and Declarant shall have the following rights in furtherance of any sales, promotions or other activities designed to accomplish or facilitate the sale of all Lots owned by Declarant:

(a) Sales Office and Model Dwellings. Declarant shall have the right to maintain one (1) or more sales offices and one (1) or more model Dwellings at any one time. Such office and/or models may be one or more of the Lots owned by the Declarant, one or more separate structures or facilities placed on the Property for the purpose of aiding Declarant's sales effort, or any combination of the foregoing;

(b) Promotional. Declarant shall have the right to maintain a reasonable number of promotional, advertising and/or directional signs, banners or similar devices at any place or places on the Property.

(c) Common Area Use. Declarant shall have the right to use the Common Areas of the Project.

(d) Relocation and Removal. Declarant shall have the right from time to time to locate or relocate any of its sales offices, models, or signs, banners or similar devices, but in connection with each such location or relocation shall observe the limitations imposed by the preceding portion of this Section. Until 120 days after the expiration of the Sale's Events Period, Declarant shall have the right to remove from the Project any signs, banners or similar devices and any separate structure or facility which was placed on the Property for the purpose of aiding Declarant's sales effort.

43. Limitation on Improvements by Association. Until the expiration of the Sale's Events Period, neither the Association nor the Committee shall, without the written consent of Declarant, make any improvement to or alteration in any of the Common Areas and Facilities created or constructed by Declarant, other than such repairs, replacements, or similar matters as may be necessary to properly maintain the Common Areas as originally created or constructed by Declarant.

44. Completion Obligation. Declarant hereby covenants in favor of each Owner that

within two (2) years from the date of any contract of sale:

(a) Lots. Each Lot which an Owner has contracted to purchase and the Building within which such Lot is contained or is to be contained shall be substantially constructed and ready for use or occupancy (as the case may be); and

(b) Common Area. There shall be substantially completed and usable as part of the Common Areas all planned landscaping, green space, sidewalks, parking facilities, roads, fences, outdoor lighting, and utility lines and conduits adjacent to the Lot or Building in which a Lot is located, and necessary for its use.

45. Declarant's Rights Assignable. All of the rights of Declarant under this Declaration may be assigned or transferred either by operation of law or through a voluntary conveyance, transfer or assignment. Any Mortgage covering all Lots or Buildings in the Project, title to which is vested in Declarant, shall, at any given point in time and whether or not such Mortgage does so by its terms, automatically cover, encumber, and include all of the then unexercised or then unused rights, powers, authority, privileges, protections and controls which are accorded to Declarant (in its capacity as Declarant) herein.

46. Expansion of the Project.

(a) Reservation of Option to Expand. Declarant hereby reserves the option to expand the Project to include additional Lots in the Project. This option to expand may be exercised from time to time, at different times and in any order, without limitation, provided however, the option shall expire seven (7) years from the date following the first conveyance of a Dwelling in Phase I unless sooner terminated by Declarant's recorded Waiver of such option, there being no other circumstances which will cause the option to expire prior to said seven (7) years. Such right may be exercised without first obtaining the consent or vote of Lot Owners and shall be limited only as herein specifically provided. Such Lots shall be created on any or all portions of the Additional Land.

(b) Supplemental Declarations and Supplemental Maps. Such expansion may be accomplished by the filing for record by Declarant in the office of the County Recorder of Salt Lake County, Utah, no later than seven (7) years from the date this Declaration is recorded, a Supplement or Supplements to this Declaration containing a legal description of the site or sites for new Lots, together with supplemental Map or Maps containing the same information with respect to the new Lots as was required on the Map with respect to the Phase I Lots. The expansion may be accomplished in phases by successive supplements or in one supplemental expansion.

(c) Expansion of Definitions. In the event of such expansion the definitions used in this Declaration automatically shall be expanded to encompass and refer to the Project as so expanded. The term "Property" shall mean the real property initially submitted under the Declaration, plus any Additional Land added to the Project by a Supplemental Declaration or by Supplemental Declarations, and reference to this Declaration shall mean this Declaration as so supplemented. All conveyances of Lots after such expansion shall be effective to transfer rights in the Project, with additional references to the Supplemental Declaration and the Supplemental Map.

The recordation in the office of the Salt Lake County Recorder of a Supplemental Map incident to any expansion shall operate automatically to grant, transfer, and convey to then Owners of Lots in the Project as it existed before such expansion the respective undivided interests in the new Common Areas added to the Project as a result of such expansion. Such recordation shall also operate to vest in any then mortgagee of any Lot in the Project as it existed, interest so acquired by the Owner of the Lot encumbering the new Common Areas added to the Project as a result of such expansion.

(d) Declaration Operative on New Lots. The new Lots shall be subject to all the terms and conditions of this Declaration and of a Supplemental Declaration, and the Lots therein shall be subject to the incidents of common ownership with all the provisions and protective covenants pertaining to a planned unit development as specified herein, upon recording the Supplemental Map and Supplemental Declaration in the said office of the Salt Lake County Recorder.

(e) Right of Declarant to Adjust Ownership Interest in Common Areas. Each deed of a Lot shall be deemed to irrevocably reserve to the Declarant the power to appoint to Lot Owners, from time to time, the percentages in the Common Areas set forth in Supplemental Declaration. The proportionate interest of each Lot Owner in the Common Areas after any expansion of the Project shall be an undivided interest of the Project as expanded. A power coupled with an interest is hereby granted to the Declarant, its successors and assigns, as attorney in fact to shift percentages of the Common Areas in accordance with Supplemental Declarations recorded pursuant hereto and each deed of a Lot in the Project shall be deemed a grant of such power to the Declarant. Various provisions of this Declaration and deeds and mortgages of the Lots may contain clauses designed to accomplish a shifting of the Common Areas. None of said provisions shall invalidate the other, but each shall be deemed supplementary to the other toward the end that a valid shifting of the Common Areas can be accomplished. Notwithstanding anything to the contrary herein, no change in the percentage of undivided interest in the Common Areas may be effected more than seven (7) years after the effective date of the Declaration.

Accordingly, upon the recordation of a Supplemental Declaration and Supplemental Map incident to any expansion, the revised schedule of undivided interests in the Common Areas contained therein shall automatically become effective for all purposes and shall fully supersede any similar schedule which was contained in any declaration associated with any prior phase. In the event the provisions of the separate instruments relating to the Project conflict irreconcilably, the terms of that instrument which was recorded most recently shall control.

(f) Other Provisions Concerning Expansion. If the Project is expanded as hereinbefore contained, then it is further provided that:

(1) All or any part of the Additional Land may be added to the Project without any limitations whatsoever save and except that all additional Lots created must be restricted to multi-family residential housing limited to one family per Dwelling Unit.

(2) Portions of the Additional Land may be added to the Project at different times without any limitations.

(3) Declarant shall have the right without further conveyance or documentation to build roads and access ways to the Additional Land through the easement areas as shown on the Map. The Association of Lot Owners shall not allow anything to be built upon or interfere with said easement areas.

(4) No assurances are made concerning:

a. The locations of any improvement that may be made on any portion of the Additional Land that may be added to the Project.

b. Type, kind or nature of improvement which may be created on any portion of the Additional Land, except that the common facilities, Buildings and Lots will be comparable to the Phase I facilities on a per Lot basis and will be of a similar quality of materials and construction to Phase I.

c. Whether any Lots created on any portion of the Additional Land will be substantially identical to those within the initial Project except that Lots will be constructed of an equal or better quality of materials and construction than the Lots in Phase I.

(5) Notwithstanding anything to the contrary which may be contained herein, the Declaration is not intended, and shall not be construed so as to impose upon Declarant any obligation respecting, or to restrict Declarant in any way with regard to: (a) the submission of any portion of the Additional Land to the provisions of the Act as Land under this Declaration; (b) the creation, construction, or addition to the Project of any additional property; (c) the carrying out in any particular way or within any particular time of any development which may be undertaken except as herein mentioned; or (d) the taking of any particular action with respect to the Additional Land, the Project, or any Land.

(6) Assuming that only Phase 1 of the Project are completed, the minimum number of Lots would be 40 and the maximum percentage of ownership interest of each Lot would be 2.50%. Assuming all Phases in the Project are completed and all of the Additional Land is added to the Project (a) the maximum number of Lots would be 156; (b) there would be 11.74 acres approximately; (c) the maximum number of Lots per net acre would be about 13.29; and (d) the minimum Percentage Interest of each Lot would be 0.641%. Provided, however, the number of Lots actually constructed and the actual undivided percentage of ownership interest of each Lot may actually be somewhere in between the numbers and percentages set forth above.

47. Combination of Lots. An owner of two (2) or more adjoining Lots shall have the right upon approval of the management committee and the mortgagees of said Lots, to combine one or more adjoining Lots or portions thereof and to alter or amend the declaration and map to reflect such combination.

(a) Such amendments may be accomplished by the Lot Owner recording an amendment or amendments to this declaration, together with an amended map or maps containing the same information with respect to the altered Lots as required in the initial Declaration and Map with respect to the initial Lots. All costs and expenses required in such amendments shall be borne

by the Lot Owner desiring such combination.

(b) All such amendments to the Declaration and Map must be approved by attorneys employed by the Management Committee to insure the continuing legality of the Declaration and the Map. The cost of such review by the attorneys shall be borne by the person wishing to combine the Lots.

(c) Any amendments of the Declaration or Map pursuant to this paragraph shall reflect the changes occasioned by the alteration. Such changes shall include a change in the percentage of undivided interest in the Common Areas which are appurtenant to the Lots involved in the alterations. The remaining combined Lot, if two or more Lots are totally combined, will acquire the total of the percentage of undivided interest in the Common Areas appurtenant to the Lots that are combined as set forth in Exhibit "B." If a portion of one Lot is combined with another, the resulting Lots shall acquire a proportionate percentage of the total undivided interest in the Common Areas of the Lots involved in the combination on the basis of area remaining in the respective, combined Lots. The percentage of undivided interest in the Common Areas appurtenant to all other Lots shall not be changed. All such amendments must, in all instances, be consented to by the Management Committee and also all other persons holding interest in the Lots affected. The consent of other Lot Owners need not be obtained to make such amendments or alterations valid, providing the percentages of undivided interest in the Common Areas of the other Lot Owners remain unchanged.

48. [Intentionally Deleted]

49. Transfer of Management. Anything to the contrary notwithstanding, Declarant may at any time relinquish its reserved right (as a Class B Member) to select the Members of the Committee and may elect to transfer the management of the Project to a Committee elected by the Owners. Upon the termination of the Period of Declarant's Control, Declarant shall notify Owners in writing of the effective date of such transfer (the "Transfer Date") at least forty-five (45) days prior thereto. Thereupon, the Owners shall call a meeting to elect the Members of the Management Committee to take office as of the Transfer Date. Declarant covenants to cooperate with the Owners in effecting an orderly transition of management. Moreover, Declarant shall cause all obligations for Common Expenses of the Association prior to the Transfer Date to be paid in full on or before such date, and shall transfer any Association funds to the newly elected Committee.

50. Working Capital Fund. A Working Capital Fund shall be established by the Declarant. Each Lot's initial share of the Working Capital Fund shall be collected and transferred to the Management Committee at the time of closing of the sale of each such Lot by Declarant and shall be equal to one month's assessment (the "Working Capital Payment"). Notwithstanding the foregoing, the contribution to the Working Capital Fund for each unsold Lot shall be paid to the Management Committee at the time a certificate of permanent occupancy is issued and such Lot is first occupied for residential purposes. With respect to each Lot for which the Declarant pays the contribution to the Working Capital Fund, the Declarant may, at its election, be reimbursed for such contribution by the buyer of such Lot at the time of closing. Thereafter, each time a Lot is sold and conveyed, the Management Committee shall collect a Working Capital Payment at the time of the closing of the transaction. The purpose of the Working Capital Fund is to function as an impact or

transfer fee, to insure that the Management Committee will have cash available to satisfy unforeseen expenses or to acquire additional equipment or services necessary for the operation, control and regulation of the residential portion of the Project. Sums paid into the Working Capital Fund are not to be considered as advance payments or regular monthly payments of Common Expenses.

51. Interpretation. To the extent Utah law is consistent with this Declaration, such provisions shall supplement the terms hereof and are incorporated herein. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall 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 hereof.

52. Covenants to Run with Land. This Declaration and all 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 the Association, all other signatories hereto, all parties who hereafter acquire any interest in a Lot or in the Project, and their respective grantees, transferees, heirs, devisees, personal representative, successors, and assigns. Each Owner or occupant of a Lot shall comply with, and all interests in all Lots shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, supplements, amendments, and determinations contemplated by this Declaration. By acquiring any interest in a Lot in the Project, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

53. Enforcement and Right to Recover Attorneys Fees. Should the Association or Committee be required to take action to enforce the Declaration, By-Laws or any administrative rules and regulations adopted from time to time, or to pursue any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing suit or otherwise, they may recover all Additional Charges, including a reasonable attorneys fee, which may arise or accrue. In addition, the Management Committee may impose the following sanctions after proper notice and the opportunity to be heard:

- (a) imposing reasonable monetary fines which shall constitute a lien upon the violator's Lot;
- (b) suspending an Owner's right to vote;
- (c) suspending any Person's right to use any of the recreational facilities; provided, however, nothing herein contained shall authorize the Management Committee to limit ingress or egress to or from a Lot;
- (d) exercising self-help or taking action to abate any violation of the Project Documents in a non-emergency situation;
- (e) exercising self-help in any emergency situation (specifically including but not limited to the towing of vehicles that are in violation of the parking rules);

(f) requiring an Owner at his sole expense to remove any structure or improvement in the Common Area, and upon the failure of the Owner to do so, the Management Committee or its designee shall have the right to enter the property and remove the violation and restore the property to its original condition, and such action shall not be deemed a trespass;

(g) without liability to any Person, precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the Project Documents; and

(h) levying Individual Assessments or Additional Charges to cover costs incurred by the Association to bring a Lot or Lot Owner into compliance.

54. Agent for Service of Process. The President of the Association is the person to receive service of process in the cases authorized by Utah law and the office. The initial Registered Agent is Charles W. Akerlow and the initial office of the Registered Agent is 261 East Broadway, Suite 100, Salt Lake City, Utah 84111.

55. Government Financing. Anything to the contrary notwithstanding, if any financing or the guaranty of any financing on a Lot is provided by the Federal Housing Administration of the United States Department of Housing and Urban Development (FHA), the Federal Home Loan Mortgage Corporation or the Mortgage Corporation (FHLMC), Federal National Mortgage Association (FNMA), Government National Mortgage Association (GNMA) or the Veterans Administration (VA), the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for the purpose of providing utilities and similar or related purposes, and the termination of the legal status of the Project for reasons other than substantial destruction or condemnation of the property, no material amendment to the Declaration, or merger, may become effective, as to said Agencies, without their prior express written consent.

56. Remedies and Fines. In addition to other remedies set forth herein and by Utah law, to enforce the essential restrictive covenants set forth herein and in the Project Documents, the Management Committee may suspend voting rights, suspend the privilege of using the recreational amenities and facilities, or assess a fine. Each Owner and Resident is responsible for adhering to the Project Documents governing the Project. A breach of these restrictive covenants and rules is subject to enforcement pursuant to the declaration and may include the imposition of a fine. Each Owner is also accountable and responsible for the behavior of his or her Residents, tenants and/or Guests. Fines levied against Residents, tenants, and Guests are the responsibility of the Owner. The Management Committee shall react to each material violation in the following manner:

(a) Fines imposed are final unless appealed in writing to the Management Committee within thirty (30) days of written notification of the violation. If a request for a hearing is not submitted to the Management Committee within thirty (30) days, the right to a hearing is waived, and the fine imposed will stand. A request for a hearing to appeal should be sent in writing to the Management Committee at the address so indicated in the notification of violation.

(b) Before assessing a fine under Subsection (a), the Management Committee

shall give notice to the homeowner of the violation and inform the Owner that the fine will be imposed if the violation is not cured within the time provided in the Declaration, Bylaws, or rules, which shall be at least forty-eight (48) hours.

(c) A fine assessed under Subsection (a) shall:

(1) be made only for a violation of a restrictive covenant, rule or regulation;

(2) be in the amount specifically provided for in the Declaration, Bylaws, or Association rules for that specific type of violation, not to exceed \$500.00; and

(3) accrue interest and late fees as provided in the Declaration, Bylaws, or Association rules.

(d) Cumulative fines for a continuing violation may not exceed \$500.00 per month.

(e) An Owner who is assessed a fine under Subsection (a) may request an informal hearing to protest or dispute the fine within thirty (30) days from the date the fine is assessed. The hearing shall be conducted in accordance with standards of due process adopted by the Management Committee. No finance charge, default interest, or late fees may accrue until after the hearing has been conducted and a final decision has been rendered.

(f) An Owner may appeal a fine issued under Subsection (a) by initiating a civil action within one hundred and eighty (180) days after:

(1) A hearing has been held and a final decision has been rendered by the Management Committee under Subsection (e); or

(2) The time to request an informal hearing under Subsection (e) has expired without Owner making such a request.

(g) A fine assessed under Subsection (a) which remains unpaid after the time for appeal has expired becomes a lien against the Owner's interest in the property in accordance with the same standards as a lien for the nonpayment of Common Expenses as described herein.

57. Termination of Utilities and Right to Use Amenities for Non-Payment of Assessments.

(a) If an Owner fails or refuses to pay any Assessment when due, the Management Committee may (a) terminate the Owner's right to receive utility services paid as a Common Expense; and (b) terminate the Owner's right of access and use of recreational facilities., after giving notice and an opportunity to be heard.

(b) Before terminating utility services or right of access and use of

recreational facilities, the Manager or Management Committee shall give written notice to the owner in the manner provided in the Declaration, Bylaws, or Association rules. The notice shall state:

(1) utility services or right of access and use of recreational facilities will be terminated if payment of the Assessment is not received within the time provided in the Declaration, Bylaws, or Association rules, which time shall be stated and be at least 48 hours;

(2) the amount of the Assessment due, including any interest or late payment fee; and

(3) the right to request a hearing.

(c) An Owner who is given such notice may request an informal hearing to dispute the Assessment by submitting a written request to the Management Committee within 14 days from the date the notice is received. A notice shall be considered received on the date (a) it is hand delivered, (b) it is delivered by certified mail, return receipt requested, or (c) five (5) days after it is deposited in the U.S. Mail, postage prepaid, addressed to the Owner's last known address on the books and records of the Association

(d) The hearing shall be conducted in accordance with the standards provided in the Declaration, Bylaws, or Association rules.

(e) If a hearing is requested, utility services or right of access and use of recreational facilities may not be terminated until after the hearing has been conducted and a final decision has been entered.

(f) Upon payment of the Assessment due, including any interest or late payment fee, the Manager or Management Committee shall immediately take action to reinstate the terminated utility services to the Lot and right to use of recreational facilities.

58. Assignment of Rents.

(a) If the Owner of a Lot who is leasing the Lot fails to pay any Assessment for a period of more than 60 days after it is due and payable, the Management Committee may demand the tenant to pay to the Association all future lease payments due the Owner, commencing with the next monthly or other periodic payment, until the amount due to the Association is paid; provided, however, the Manager or Management Committee must give the Owner written notice, in accordance with the Declaration, Bylaws, or Association rules, of its intent to demand full payment from the tenant. This notice shall:

(1) provide notice to the tenant that full payment of remaining lease payments will commence with the next monthly or other periodic payment unless the Assessment is received within the time period provided in the Declaration, Bylaws, or Association rules;

(2) state the amount of the Assessment due, including any interest or late payment fee;

(3) state that any costs of collection, not to exceed \$150, and other Assessments that become due may be added to the total amount due; and

(4) provide the requirements and rights described herein.

(b) If the Owner fails to pay the amount of the Assessment due by the date specified in the notice, the Manager or Management Committee may deliver written notice to the tenant, in accordance with the Declaration, Bylaws, or Association rules, that demands future payments due to the Owner be paid to the Association pursuant hereto. A copy of the notice must be mailed to the Owner at his last known address as shown on the books and records of the Association. The notice provided to the tenant must state:

(1) that due to the Owner's failure to pay the Assessment within the time period allowed, the Owner has been notified of the Management Committee's intent to collect all lease payments due to the Association pursuant hereto.

(2) that until notification by the Association that the Assessment due, including any interest or late payment fee, has been paid, all future lease payments due to the Owner are to be paid to the Association; and

(3) payment by the tenant to the Association in compliance herewith will not constitute a default under the terms of the lease agreement. If payment is in compliance with this Subsection (b), suit or other action may not be initiated by the Owner against the tenant for failure to pay.

(c) All funds paid to the Association pursuant hereto shall be deposited in a separate account and disbursed to the Association until the Assessment due, together with any cost of administration which may not exceed \$25, is paid in full. Any remaining balance must be paid to the Owner within five business days of payment in full to the Association.

(d) Within five business days of payment in full of the Assessment, including any interest or late payment fee, the Manager or Management Committee must notify the tenant in writing that future lease payments are no longer due to the Association. A copy of this notification must be mailed to the Owner.

(e) As used in this section, the terms "lease" or "leasing" shall mean and refer to regular, exclusive occupancy of a Lot by any person or persons, other than the Owner, for which the Owner receives any consideration or benefit, including a fee, service, gratuity, or emolument.

59. Term. This Declaration shall continue for a term of fifty (50) years from its date of recordation. Thereafter, this Declaration shall be automatically extended for successive periods of ten (10) years until a vote of greater than fifty percent (50.0%) of the Members determines that this Declaration shall terminate.

60. Effective Date. This Declaration, any amendment or supplement hereto, and any amendment or supplement to the Plat Map shall take effect upon its being filed for record in the office of the County Recorder of Salt Lake County, Utah.

EXECUTED the 20th day of June, 2005.

DECLARANT:

DH-Draper, LLC
a Utah limited liability company

By: Dearbourne Heights, LLC, Its Manager
By: Proterra Companies, Inc., Its Manager

By: Charles W. Akerlow
Charles W. Akerlow, President

STATE OF UTAH)
)ss:
COUNTY OF SALT LAKE)

On the 20 day of June, 2005, personally appeared before me CHARLES W. AKERLOW, who by me being duly sworn, did say that he is the President of the Manager of the Managing Member of **DH-Draper, LLC**, a Utah limited liability company, and that the within and foregoing instrument was signed in behalf of said Company by authority, and said CHARLES W. AKERLOW duly acknowledged to me that said Company executed the same.

Amanda M. Whitten
NOTARY PUBLIC
Residing at:
My Commission Expires: 5/18/09



EXHIBIT "A"
LEGAL DESCRIPTION OF THE TRACT

Phase 1

All of Dearbourne Heights P.U.D. Phase 1, A planned unit development, Located in the Northwest Quarter of the Northwest Quarter of Section 18, Township 4 South, Range 1 East, Salt Lake Base and Meridian. Draper City, Salt Lake County, State of Utah less and excepting Lots 3 and 6.

Tax Parcel Number 34-18-105-002-0000

EXHIBIT "B"
PERCENTAGES OF UNDIVIDED OWNERSHIP INTEREST

<u>Phase</u>	<u>Bldg. No.</u>	<u>Lot No.</u>	<u>Percentage of Interest</u>
1	1	1	3.5714
1	1	2	3.5714
1	1	3	3.5714
1	1	4	3.5714
1	1	5	3.5714
1	1	6	3.5714
1	2	7	3.5714
1	2	8	3.5714
1	2	9	3.5714
1	2	10	3.5714
1	3	11	3.5714
1	3	12	3.5714
1	3	13	3.5714
1	3	14	3.5714
1	4	15	3.5714
1	4	16	3.5714
1	5	17	3.5714
1	5	18	3.5714
1	5	19	3.5714
1	5	20	3.5714
1	6	21	3.5714
1	6	22	3.5714
1	7	23	3.5714
1	7	24	3.5714
1	7	25	3.5714
1	7	26	3.5714
1	7	27	3.5714
1	7	28	3.5714

TOTAL: 100.00%

EXHIBIT "C"
BY-LAWS

The following are the By-Laws of DEARBOURNE HEIGHTS ASSOCIATION, INC.

ARTICLE I
PLAN OF LOT OWNERSHIP AND INCORPORATION

1. **Submission.** These are the By-Laws referred to in the foregoing Declaration of Covenants, Conditions, and Restrictions of DEARBOURNE HEIGHTS (the "Declaration"), which is located in Salt Lake County, State of Utah. These By Laws shall govern the administration of the Project and the Association.

2. **Organizational Form.** If the Association is incorporated under the laws of the State of Utah, then these By-Laws shall also function and operate as the by-laws of the corporation.

3. **Office and Registered Agent.** The initial Registered Agent shall be Charles W. Akerlow of 261 East Broadway, Suite 100, Salt Lake City, Utah 84111. However, after transfer of management and control of the Association is made by the Declarant to the Members of the Association, the Registered Agent shall be the President of the Association and the Registered Office shall be the home of the President or such other place as shall be designated by him.

ARTICLE II
ASSOCIATION

1. **Composition.** The Association of Lot Owners is a mandatory association consisting of all Owners.

2. **Place of Meeting.** Meetings of the Association shall be held at the principal office of the Association or at such other suitable place as may be designated by the Management Committee from time to time and stated in the notice of meeting.

3. **Notice of Meeting.** It shall be the duty of the Secretary to hand deliver or mail to each owner at his last known address, by regular U.S. mail postage prepaid, a notice of (a) each annual meeting of the Association not less than ten (10) and not more than thirty (30) days in advance of such meeting. The notice shall state the purpose, day, date, time and place of the meetings. The mailing of a notice of meeting in the manner provided in this Section shall be considered service of notice.

4. **Qualified Voters.** An Owner shall be deemed to be in "good standing" and "entitled to vote" at any meeting of the Association if, and only if, he shall be in full compliance with all of the terms, covenants, and conditions of the Project Documents, and shall have fully paid his share of the Common Expenses and all Assessments and/or Additional Charges due.

5. **Proxies.** The votes appertaining to any Lot may be cast pursuant to a proxy or proxies duly executed by or on behalf of the Lot Owner, or in cases where the Owner is more than one Person, by or on behalf of all such Persons. Any proxy shall be void if it is not dated, if it purports to be revocable without notice, or if it is not signed by a person having authority, at the time of the execution thereof, to execute deeds on behalf of that person. Unless it expressly states otherwise, a proxy shall terminate automatically (a) if the Owner attends the meeting in person, (b) it is revoked in writing and written notice of the revocation is given to the Secretary of the Association prior to the meeting, and (c) upon the adjournment of the first meeting held on or after the date of that proxy. Each proxy must be filed with the Secretary of the Association prior to the meeting. Only individual Owners or the legal representative of an institutional Owner may be proxies.

6. **Quorum Voting.** Fifty-one (51.0%) percent of the Members of the Association shall constitute a quorum for the adoption of decisions. If however, such quorum shall not be present or represented at any meeting, the Owners entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting and reschedule for a time no earlier than two (2) days after the set time for the original meeting. No notice of such rescheduled meeting shall be required except an oral announcement at the meeting to be rescheduled. Those Owners present, either in person or by proxy, at the rescheduled meeting shall constitute a quorum for the adoption of decisions. When a quorum is present at any meeting, the vote of the Owners representing a majority of the members of the Association in person or by proxy, shall decide any question brought before the meeting. If the Declaration requires a fixed percentage of Owners to approve any action, however, that percentage shall be required anything to the contrary notwithstanding.

7. **Order of Business.** The order of business at all meetings of the Association shall be as follows:

- (a) roll call;
- (b) proof of notice of meeting;
- (c) reading of minutes of preceding meeting;
- (d) reports of officers;
- (e) report of special committees, if any;
- (f) election of inspectors of election, if applicable;
- (g) election of Committee Members, if applicable;
- (h) unfinished business; and
- (i) new business.

8. **Conduct of Meeting.** The President shall, or in his absence the Vice-President, preside over all meetings of the Association; and the Secretary shall keep the minutes of the meeting as well as record of all transactions occurring thereat.

9. **Open Meeting Policy.** All Management Committee meetings shall be open to all voting Members, but attendees other than members of the Management Committee may not participate in any discussion or deliberation unless a majority of a quorum requests that they be granted permission to speak. In such case, the President may limit the time any such individual may speak.

10. Action May Be Taken Without A Meeting. Any action to be taken at the meeting of the Management Committee or any action that be taken at a meeting of the Management Committee may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all the members of the Management Committee. An explanation of the action taken shall be posted at a prominent place or places within the Common Areas within three (3) days after the written consents of all of the members of the Management Committee have been obtained.

11. Executive Session. The Management Committee, with approval of a majority of a quorum, may adjourn a meeting and reconvene an executive session to discuss and vote upon personnel matters, litigation or threatened litigation in which the Association is or may become involved, and orders of business of a privileged, confidential, sensitive or similar nature. The nature of any and all business to be considered in an executive session shall first be announced in open session.

ARTICLE III MANAGEMENT COMMITTEE

1. Powers and Duties. The affairs and business of the Association shall be managed by the Management Committee consisting of three (3) Lot Owners. The Management Committee shall have all of the powers and duties necessary for the administration of the affairs of the Association in accordance with the provisions of the Declaration and may do all such acts and things necessary to operate and maintain the Project. The Committee shall have the power from time to time to adopt any Rules and Regulations deemed proper for the exercise of its management powers. The Committee may delegate its authority to a Manager or Managers. Subject to any limitations or provisions contained in the Declaration, the Committee shall be responsible for at least the following:

- (a) Preparation of an annual budget;
- (b) Establishing the Assessment of each Owner;
- (c) Providing for the operation, care, upkeep, replacement, maintenance, and regulation of all the Common Areas and Facilities;
- (d) Hiring, a professional manager and the personnel necessary to operate and maintain the Project;
- (e) Collecting the Assessments;
- (f) Enforcing the Project Documents;
- (g) Establishing bank accounts;
- (h) Obtaining insurance;
- (i) Keeping books and records with detailed accounts of the receipts and

expenditures affecting the Property, and the administration of the Project, specifying the maintenance and repair expenses of the Common Areas and any other expenses incurred. Said documents, books, financial statements, and vouchers accrediting the entries thereupon shall be available for examination by the Owners, their duly authorized agents or attorneys, during general business hours on working days at the times and in the manner that shall be set and announced by the Committee for the general knowledge of the Owners. All books and records shall be kept in accordance with generally accepted accounting practices. A majority of the Management Committee or a majority of the Owners may request a compilation report, reviewed financial statement, or audited financial statement from a certified public accountant who neither resides at the Project or is a Unit Owner, the cost of which shall be a Common Expense;

(j) Providing common utilities; and

(k) Doing such other things and acts necessary to accomplish the foregoing and not inconsistent with the Declaration or By-Laws, or to do anything required by a proper resolution of the Management Committee or Association.

2. Composition of Management Committee. The Management Committee shall be composed of three (3) members.

3. Election and Term of Office of the Committee. The term of office of membership on the Management Committee shall be two (2) years. At the expiration of the member's term, a successor shall be elected.

4. First Meeting. The first meeting of the members of the Management Committee shall be immediately following the annual meeting of the Association or at such other time and place designated by the Committee.

5. Regular Meetings. Regular meetings of the Management Committee shall be held from time to time and at such time and place as shall be determined by a majority of the members of the Committee, but no less often than monthly.

6. Special Meetings. Special meetings of the Management Committee may be called by the President, Vice President or a majority of the members on at least forty-eight (48) hours prior notice to each member. Such notice shall be given personally, by regular U.S. Mail postage prepaid, or by telephone, and such notice shall state the time, place and purpose of the meeting. Any meeting attended by all members of the Committee shall be valid for any and all purposes.

7. Waiver of Notice. Before or at any meeting of the Management Committee, any member may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member at any meeting of the Committee shall constitute a waiver of notice. If all the members are present at any meeting of the Committee, no notice shall be required and any business may be transacted at such meeting.

8. Committee's Quorum. At all meetings of the Management Committee, a majority of the members then in office shall constitute a quorum for the transaction of business, and the acts of

the majority of all the Committee members present at a meeting at which a quorum is present shall be deemed to be the acts of the Committee. If, at any meeting of the Committee, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time but for no longer than two (2) days. At any such rescheduled meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

9. Vacancies. Vacancies in the Management Committee caused by any reason other than removal of a member by a vote of the Association shall be filled by vote of the majority of the remaining members of the Committee at a special meeting of the Committee held for that purpose promptly after the occurrence of any such vacancy, even though the total members remaining may constitute less than a quorum of the committee; and each person so elected shall be a member for the remainder of the term of the member so replaced. A vacancy created by the removal of a member by a vote of the Association shall be filled by the election and vote of the Association.

10. Removal of Committee Member. A member of the Management Committee may be removed with or without cause, and his successor elected, at any duly called regular or special meeting of the Association at which a quorum of the Association is present, by an affirmative vote of a majority of the members of the Association. Any member whose removal has been proposed by the Owners shall be given at least thirty days notice of the calling of the meeting and the purpose thereof and an opportunity to be heard at the meeting. Any Committee Member who misses twenty-five percent (25%) or more of the Committee Meetings or who misses three (3) consecutive meetings, in any calendar year, shall be automatically removed from the Committee.

11. Conduct of Meetings. The President shall preside over all meetings of the Committee and the Secretary shall keep a Minute Book of the Committee recording therein all resolutions adopted by the Committee and a record of all transactions and proceedings occurring at such meetings.

12. Report of Committee. The Committee shall present at each annual meeting, and when called for by vote of the Association at any special meeting of the Association, a full and clear statement of the business and condition of the Association.

ARTICLE IV OFFICERS

1. Designation. The principal officers of the Association shall be a President, a Vice-President, a Secretary and a Treasurer, all of whom shall be elected by the Committee. The Committee may appoint assistant secretaries and such other officers as in its judgment may be necessary. All officers shall also be members of the Committee. Two or more offices may be held by the same person, except that the President shall not hold any other office.

2. Election of Officers. The officers of the Association shall be elected annually by the Committee at the first meeting of each Committee immediately following the annual meeting of the Association and shall hold office at the pleasure of the Committee. Any vacancy in an office shall be filled by the Committee at a regular meeting or special meeting called for such purpose.

3. Removal of Officers. The officers shall hold office until their respective successors are chosen and qualify in their stead. Any officer elected or appointed by the Committee may be removed at any time by the affirmative vote of a majority of the Committee, and his successor may be elected at any regular meeting of the Committee, or at any special meeting of the Committee called for such purposes.

4. President. The President shall be the chief executive officer; he shall preside at meetings of the Association and the Committee shall be an ex-officio member of all committees; he shall have general and active management of the business of the Committee and shall see that all orders and resolutions of the Committee are carried into effect. He shall have all of the general powers and duties which are usually vested in or incident to the use of president of a corporation organized under the laws of the State of Utah.

5. Vice-President. The Vice-President shall, in the absence or disability of the President, perform the duties and exercise the powers of the President, and shall perform such other duties as the Committee or the President shall prescribe. If neither the President nor the Vice President is able to act, the Committee shall appoint a member of the Committee to do so on an interim basis.

6. Secretary. The secretary shall attend all meetings of the Committee and all meetings of the Association and record all votes and the minutes of all proceedings in a book to be kept by him for that purpose and shall perform like duties for committees when required. He shall give, or cause to be given, notices for all meetings of the Association and the Committee and shall perform such other duties as may be prescribed by the Committee. The Secretary shall compile and keep current at the principal office of the Association, a complete list of the Owners and their last known post office addresses. This list shall be open to inspection by all Owners and other persons lawfully entitled to inspect the same, at reasonable hours during regular business days. The Secretary shall also keep current and retain custody of the Minute Book of the Association, containing the minutes of all annual and special meetings of the Association and all sessions of the Committee including resolutions.

7. Treasurer. The Treasurer shall have custody of all funds and securities that are not under the control of the Managing Agent, and with the assistance of the Managing Agent, shall keep full and accurate records of receipts and disbursements, shall prepare all required financial data, and shall deposit all monies and other valuable effects in such depositories as may be designated by the Committee. He shall disburse funds as ordered by the Committee, taking proper vouchers for such disbursements, and shall render to the President and members, at the regular meetings of the Committee, or whenever they may require it, an account of all his transactions as Treasurer and of the financial condition of the Project.

ARTICLE V FISCAL YEAR

The fiscal year of the Association shall be the calendar year consisting of the twelve (12) month period commencing on January 1 of each year terminating on December 31 of the same year. The fiscal year herein established shall be subject to change by the Committee should it be deemed

advisable or in the best interests of the Association.

ARTICLE VI
INVESTMENT OF COMMON FUNDS

Common funds may only be deposited into institutions which are federally insured. Common funds shall be deposited into in savings or money market accounts, or to purchase certificates of deposit. Other higher-risk investments, with a potential higher-rate-of-return, such as stocks, bonds, mutual funds and U.S. treasuries and the like, may only be used with the prior express written and affirmative consent of at least 75% of the Owners, all eligible mortgagees, and if any financing or the guaranty of any financing on a Lot or Dwelling Unit is provided by the Federal Housing Administration of the United States Department of Housing and Urban Development (FHA), the Federal Home Loan Mortgage Corporation or the Mortgage Corporation (FHLMC), Federal National Mortgage Association (FNMA), Government National Mortgage Association (GNMA) or the Department of Veterans Affairs (VA).

ARTICLE VII
AMENDMENT TO BY-LAWS

1. **Amendments.** These By-Laws may be modified or amended either (a) by the affirmative vote of a majority of the Members of the Association or (b) pursuant to a written instrument of consent duly executed by a majority of the Members of the Association provided all of the written consents are obtained within a ninety (90) day period.

2. **Recording.** An amendment to these By-Laws shall become effective immediately upon recordation in the Office of the County Recorder of Salt Lake County, Sate of Utah.

ARTICLE VIII
NOTICE

1. **Manner of Notice.** All notices, demands, bills, statements, or other communications provided for or required under these By-Laws (except as to notices of Association meetings which were previously addressed in Article II of these By-Laws) shall be in writing and shall be deemed to have been duly given if delivered personally or sent by regular U.S. Mail postage pre-paid, a) if to an Owner, at the address of his Lot and at such other address as the Owner may have designated by notice in writing to the Secretary; or b) if to the Committee or the Manager, at the principal office of the Manager or at such other address as shall be designated by notice in writing to the Owners pursuant to this Section.

2. **Waiver of Notice.** Whenever any notice is required to be given under the provisions of the statutes, the Declaration, or of these By-Laws, a waiver thereof, in writing, signed by the Person or Persons entitled to such notice, whether signed before or after the time stated therein, shall be deemed equivalent thereto, unless such waiver is ineffective under the provisions of the Declaration.

ARTICLE IX

COMPLIANCE, CONFLICT, AND MISCELLANEOUS PROVISIONS

1. Conflict. These By-Laws are subordinate and subject to all provisions of the Declaration. All of the terms hereof, except where clearly repugnant to the context, shall have the same meaning as they are defined to have in the Declaration. In the event of any conflict between these By-Laws and the Declaration, the provision of the Declaration shall control.

2. Waiver. No restriction, condition, obligation, or provision of these By-Laws shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

3. Captions. The captions contained in these By-Laws are for convenience only and are not part of these By-Laws and are not intended in any way to limit or enlarge the terms and provisions of these By-Laws.

4. Interpretation. Whenever in these By-Laws the context so requires, the singular number shall refer to the plural and the converse; and the use of any gender shall be deemed to include both masculine and feminine; and the term "shall" is mandatory while the term "may" is permissive.

5. Severability. The invalidity of any one or more phrases, sentences, subparagraphs, subsections or sections hereof shall not affect the remaining portions of this instrument or any part thereof, and in the event that any portion or portions of this document should be invalid or should operate to render this document invalid, this document shall be construed as if such invalid phrase or phrases, sentence or sentences, subparagraph or subparagraphs, paragraph or paragraphs, subsection or subsections, or section or sections had not been inserted.

EXECUTED the 20th day of June, 2005

DECLARANT:

DH-Draper, LLC
a Utah limited liability company

By: Dearbourne Heights, LLC, Its Manager
By: Proterra Companies, Inc., Its Manager

By: 
Charles W. Akerlow, President

STATE OF UTAH)
)ss:
COUNTY OF SALT LAKE)

On the 20 day of June, 2005, personally appeared before me CHARLES W. AKERLOW, who by me being duly sworn, did say that he is the President of the Manager of the

Managing Member of **DH-Draper, LLC**, a Utah limited liability company, and that the within and foregoing instrument was signed in behalf of said Company by authority, and said **CHARLES W. AKERLOW** duly acknowledged to me that said Company executed the same.

Amanda M. Whitten

NOTARY PUBLIC

Residing at: *Salt Lake City*
My Commission Expires: *5/18/09*

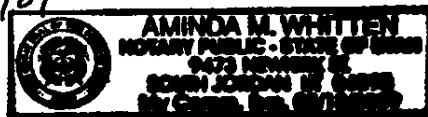


EXHIBIT "D-1"
LEGAL DESCRIPTION OF ADDITIONAL LAND
(Phase 2)