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FEB 27 1997

AFTER RECORDATION RETURN TO:
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CAROL DEAN PAGE, DAVIS CNTY RECORDER
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Smithtowne #1
Lots 1-22

**STATEMENT OF BYLAWS OF
SMITHTOWNE HOME OWNER ASSOCIATION, INC.**

Effective this 19th day of February, 1997 the undersigned incorporator adopts and records the following stated Bylaws of the Smithtowne Home Owner Association, Inc., in connection with the ownership, maintenance, assessment, and other activities involving the common area of Smithtowne Subdivision, a Planned Residential Unit Development, located in Davis County, Utah, owned by this corporation. These Bylaws affect the property rights and attributes of all property interests located within the:

Smithtowne Subdivision, a Planned Residential Unit Development, according to the official records of the office of the Davis County Recorder, State of Utah.

12-235-0001-0022 **ARTICLE I. OFFICES**

§ 1.1 Location

The principal office location of the Smithtowne Home Owner Association, Inc., ("Home Owner Association" or "Association") shall be at any place within the State of Utah as designated in the Association's most recent Annual Report or Notice of Change of Principal Office filed with the Division of Corporations and Commercial Code.

§ 1.2 Registered Office

The registered office of the Association required by Utah Code Ann. §16-6-25.1 (1990) shall be located within the state of Utah and may be, but need not be, identical with the principal office (if located within Utah). The address of the registered office may be changed from time to time.

ARTICLE II. HOME OWNERS

§ 2.1 Homeowners Association Meetings

The Home Owners which are the members of the Association ("Homeowner" or "Member") shall meet according to the provisions set forth for meetings in the Declaration of Covenants, Conditions and Restrictions of Smithtowne Subdivision No. 1 recorded as Entry No. 1238552 in Book 1986 at Page 377 on April 3, 1996, in the office of the Davis County Recorder, State of Utah ("Declaration"), including at least one annual meeting.

§ 2.2 Special Homeowners Association Meetings

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Special meetings of the Association, for any purpose or purposes described in the Declaration and the meeting notice, may be called as provided in the Declaration or, if not provided in the Declaration, by any trustee or by 20% of the members.

§ 2.3 Place of Homeowners Association Meetings

The Association shall meet at a home within the Smithtowne Subdivision or at any other convenient location in Davis County, Utah as designated by the Trustees or members giving notice.

§ 2.4 Notice of the Homeowners Association Meetings

(a) *Required Notice.* Written notice stating the location, time, day and hour of any and all Home Owner Association meetings pursuant to the Declaration shall be served not less than ten (10) nor more than thirty (30) days before the date of the meeting, either personally or by certified United States mail, return receipt requested, postage prepaid, by or at the direction of the president, the Board of Trustees, or other persons calling the meeting, to each Homeowner of record entitled to vote at such meeting and to any other Homeowner entitled by law or the articles of incorporation to receive notice of the meeting. Notice shall be deemed to be effective at the earlier of: (1) when deposited in the United States mail, addressed to the Homeowner at his address as it appears on the records of the Association, with postage thereon prepaid; or when received.

(b) *Adjourned Meeting.* If any Homeowner meeting is adjourned to a different date, time, or place, and the adjournment is for not more than forty-five (45) days, notice need not be given of the new date, time and place, if the new date, time and place is announced at the meeting before adjournment. But if a new record date for the adjourned meeting is, or must be fixed then notice must be given pursuant to the requirements of paragraph (a) of this § 2.4, to those persons who are Homeowners as of the new record date.

(c) *Waiver of Notice.* The Homeowner may waive notice of the meeting (or any notice required by the Act, articles of incorporation, or bylaws), by a writing signed by the Homeowner entitled to the notice, which is delivered to the Association (either before or after the date and time stated in the notice) for inclusion in the minutes or filing with the corporate records.

A Homeowner's attendance at a meeting:

(1) waives objection to lack of notice or defective notice of the meeting, unless the Homeowners at the beginning of the meeting objects to holding the meeting or transacting business at the meeting;

(2) waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the Homeowners objects to considering the matter when it is presented.

(d) *Contents of Notice.* The notice of each Homeowners meeting shall include a description of the purpose or purposes for which the meeting is called.

§ 2.5 Duties and Powers of the Association

Without limiting any other duties which may be imposed upon the Association, the Association shall have the obligation to do and perform each and every one of the following:

- (a) The Association shall accept all Owners as members of the Association.
- (b) The Association shall accept title to all Common Area conveyed to it by the Developers of the Subdivision.
- (c) The Association shall maintain the Common Area at the Subdivision.
- (d) To the extent not assessed to or paid by the Owners directly, the Association shall pay all real property taxes and assessments levied upon any portion of the Common Area provided that the Association shall have the right to contest or compromise any such taxes or assessments.

The Association shall be permitted to do the required or permitted activities under the Declaration and all amendments thereto, including but not limited to the following:

- (a) The Association shall have the power to commence and maintain actions and defend, if necessary, such lawsuits to enforce the Declaration and to restrain and enjoin any breach or threatened breach of this Declaration and or any rules and regulations promulgated by the Board of Trustees of the Association, or to enforce by mandatory injunction or otherwise all of the provisions of the Declaration.
- (b) The Association shall have the power to construct, maintain, repair and landscape the Common Areas on such terms and conditions as the Board of Trustees of the Association shall deem appropriate.
- (c) The Association shall have the power to commission and/or employ the services of architects, contractors, engineers, attorney and certified public accountants and such other professional or non-professional services as the Board may deem desirable or necessary in its discretion.

(d) To have perpetual succession by its corporate name unless a limited period of duration is stated in its articles of incorporation.

(e) To sue and be sued, complain and defend, in its corporate name.

(f) The Association may obtain and maintain in force the policies of casualty, fire hazard and liability insurance at the Subdivision.

(g) To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.

(h) To conduct its affairs, transact its business, carry on its operations, and have offices and exercise the powers granted by this act in Davis County, state of Utah.

(i) To elect or appoint officers and agents of the Association, and define their duties and fix their compensation, if any.

(j) To make and alter bylaws, or resolutions, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the Association.

(k) To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the Association is organized.

(l) All other powers necessary or convenient for carrying out the powers and functions set forth herein.

§ 2.6 Homeowners List

The Trustees shall make a complete record of the Homeowners entitled to vote at each meeting of Homeowners thereof, arranged in alphabetical order, with the address of and the type of shares held by each. The Homeowner list must be available for inspection by any Homeowner, beginning two (2) business days after notice of the meeting is given for which the list was prepared and continuing through the meeting. The list shall be available at the Association's principal office or at a place identified in the meeting notice in the city where the meeting is to be held. A Homeowner, his agent, or attorney is entitled on written demand to inspect and, subject to the requirements of § 2.12 of this Article II, to copy the list during regular business hours and at his expense, during the period it is available for inspection. The Association shall maintain the Homeowner list in written form or in another form capable of conversion into written form within a reasonable time.

§ 2.7 Homeowner Quorum and Voting Requirements

Except as set forth hereinafter and subject to the Declaration, the members present or represented by proxy at a duly noticed Home Owner Association meeting constitute a quorum of that voting group for action on that matter.

A quorum for determination of any Annual Assessments or Special Assessments shall be as follows:

At the first Assessment meeting in any calendar year, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If a quorum is not present at the first assessment meeting, a supplemental assessment meeting may be called (subject to the notice requirements set forth in this section) at which a quorum shall be one-half of the quorum which was required at the immediately preceding first assessment meeting. No such supplemental assessment meeting shall be held more than forty-five (45) days following the immediately preceding first assessment meeting; otherwise, quorum requirements shall revert as if the supplemental meeting were the first general or special assessment meeting of the calendar year.

Once a share is represented for any purpose at a meeting, it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting.

If a quorum exists, action on any matter (other than the election of Trustees) is approved if the total votes cast favoring the action exceed the votes cast opposing the action, unless the articles of incorporation or the Utah Non-Profit Corporation and Co-Operative Association Act require a greater number of affirmative votes.

§ 2.8 Proxies

At all meetings of Homeowners, a Homeowner may vote in person, or vote by proxy which is executed in writing by the Homeowner or which is executed by his duly authorized attorney-in-fact. Such proxy shall be appointed before or at the time of the meeting. No proxy shall be valid after eleven (11) months from the date of its execution unless otherwise provided in the proxy.

§ 2.9 Voting of Memberships

Unless otherwise provided in the articles, each member entitled to vote shall be entitled to one vote, upon each matter submitted to a vote at a meeting of Homeowners.

§ 2.10 Association's Acceptance of Votes

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(a) If the name signed on a vote, consent, waiver, proxy appointment, or proxy appointment revocation corresponds to the name of a Homeowner, the Association, if acting in good faith, is entitled to accept the vote, consent, waiver, proxy appointment, or proxy appointment revocation and give it effect as the act of the Homeowner.

(b) If the name signed on a vote, consent, waiver, proxy appointment, or proxy appointment revocation does not correspond to the name of a Homeowner, the Association, if acting in good faith, is nevertheless entitled to accept the vote, consent, waiver, proxy appointment, or proxy appointment revocation and give it effect as the act of the Homeowner if:

(1) the Homeowner is an entity as defined in the Utah Non-Profit Corporation and Co-Operative Association Act and the name signed purports to be that of an officer or agent of the entity;

(2) the name signed purports to be that of an executor, administrator, guardian, or conservator representing the Homeowner and, if the Association requests, evidence of fiduciary status acceptable to the Association has been presented with respect to the vote, consent, waiver, proxy appointment, or proxy appointment revocation;

(3) the name signed purports to be that of a receiver or trustee in bankruptcy of the Homeowner and, if the Association requests, evidence of this status acceptable to the Association has been presented with respect to the vote, consent, waiver, proxy appointment, or proxy appointment revocation;

(4) the name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the Homeowner and, if the Association requests, evidence acceptable to the Association of the signatory's authority to sign for the Homeowner has been presented with respect to the vote, consent, waiver, proxy appointment, or proxy appointment revocation; or

(5) two (2) or more persons are the Homeowner as co-tenants or fiduciaries and the name signed purports to be the name of at least one of the co-tenants or fiduciaries and the person signing appears to be acting on behalf of all co-tenants or fiduciaries.

(c) If memberships are registered in the names of two or more persons, whether fiduciaries, members of a partnership, covenants, husband and wife as community property, voting Trustees, persons entitled to vote under a Homeowner voting agreement or otherwise, or if two or more persons, including proxy-holders, have the same fiduciary relationship respecting

the same memberships, unless the secretary of the Association or other officer or agent entitled to tabulate votes is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect:

- (1) if only one votes, the act binds all;
- (2) if more than one vote, the act of the majority so voting binds all;
- (3) if more than one vote, but the vote is evenly split on any particular matter, each faction may vote the securities in question proportionately;
- (4) if the instrument so filed or the registration of the memberships shows that any tenancy is held in unequal interests, a majority or even split for the purpose of this section shall be a majority or even split in interest.

(d) The Association is entitled to reject a vote, consent, waiver, proxy appointment, or proxy appointment revocation if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the Homeowner.

(e) The Association and its officer or agent who accepts or rejects a vote, consent, waiver, proxy appointment, or proxy appointment revocation in good faith and in accordance with the standards of this section are not liable in damages to the Homeowner for the consequences of the acceptance or rejection.

(f) Association action based on the acceptance or rejection of a vote, consent, waiver, proxy appointment, or proxy appointment revocation under this section is valid unless a court of competent jurisdiction determines otherwise.

§ 2.11 Voting for Trustees

Trustees are elected by plurality of the votes cast by the membership entitled to vote in the election at a meeting at which a quorum is present. For example, if there are two trustees vacancies being voted upon, the top two (2) vote getters shall be appointed.

§ 2.12 Homeowner's Rights to Inspect Association Records

(a) *Minutes and Accounting Records.* The Association shall keep as permanent records minutes of all meetings of its Board of Trustees, a record of all actions taken by the Homeowners or Board of Trustees without a meeting, and a record of all actions taken by a committee of the Board of Trustees in place of the Board of Trustees on behalf of the Association. The Association shall maintain appropriate accounting records.

(b) *Absolute Inspection Rights of Records Required at Principal Office.* If he gives the Association written notice of his demand at least five (5) business days before the date on which he wishes to inspect and copy, a Homeowner (or his agent or attorney) has the right to inspect and copy, during regular business hours any of the following records:

- (1) its articles of incorporation currently in effect;
- (2) its bylaws and all amendments currently in effect;
- (3) the Declaration and all amendments currently in effect;
- (4) the minutes of all Homeowners' meetings, and records of all action taken by Homeowners without a meeting, for the past three (3) years;
- (5) all written communications within the past three (3) years to Homeowners as a group or to the holders of any class or series of memberships as a group;
- (6) a list of the names and business addresses of its current Trustees and officers;
- (7) its most recent annual report delivered to the Division of Corporations and Commercial Code pursuant to the Utah Non-Profit Corporation and Co-Operative Association Act; and
- (8) all financial statements prepared for periods ending during the last three years, which shall show in reasonable detail the Association's assets and liabilities and the results of its operations.

(c) *Conditional Inspection Right.* In addition, if he or she gives the Association a written demand made in good faith and for a proper purpose at least five (5) business days before the date on which he wishes to inspect and copy, he describes with reasonable particularity his purpose and the records he desires to inspect, and the records are directly connected with his purpose, a Homeowner of a Association (or his agent or attorney) is entitled to inspect and copy, during regular business hours at a reasonable location specified by the Association, any of the following records of the Association:

- (1) excerpts from minutes of any meeting of the Board of Trustees, records of any action taken by the Board of Trustees or by a committee of the Board of Trustees on behalf of the Association, minutes of any meeting of the Homeowners, records of action taken by the Homeowners without a meeting, and waivers of notices of any meeting of the Homeowners or of the Board of Trustees or of any committee of the Board of Trustees, to the extent not subject to inspection under paragraph (a) of this § 2.12; and

(d) *Copy Costs.* The right to copy records includes, if reasonable, the right to receive copies made by photographic, xerographic, or other means. The Association may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the Homeowner. The charge may not exceed the estimated cost of production or reproduction of the records.

ARTICLE III. Board of Trustees

§ 3.1 General Powers

Unless the articles of incorporation have dispensed with or limited the authority of the Board of Trustees by describing who will perform some or all of the duties of a Board of Trustees, all Association powers shall be exercised by or under the authority of, and the business and affairs of the Association shall be managed under the direction of the Board of Trustees. Specifically, but without limitation, the Board of Trustees shall have the power to enforce, exercise or uphold the Declaration and Articles of Incorporation. The Board from time to time and subject other provisions of the Declaration may adopt, amend, repeal and enforce rules and regulations governing, among other things: (a) the use of the Common Area; (b) other matters concerning the use and enjoyment of the Property.

§ 3.2 Number, Tenure, and Qualifications of Trustees

(a) Until the Class B membership ceases because Declarant ceases to own any lots, the Declarant, or its successors in interest as Declarant under the Declaration, shall have the right and option to appoint, remove and replace all of the members of the Board of the Association. In the event the Declarant fails to exercise this option or in the event the Declarant by written notice to the Association voluntarily turns over to the Members the responsibility for electing the Board before the termination of said Class B membership, the Board shall be elected by the Members of the Association in accordance with the Declaration, these Articles of Incorporation and the Bylaws of the Association.

(b) Until the Class B membership ceases pursuant to the terms of the Declaration, the initial Board members appointed by Declarant need not be composed of Members. After the Class B membership ceases pursuant to the terms of the Declaration, the Trustee selected by the Association must be Members unless or until there are insufficient Members who desire to serve on the Board, in which case Trustees need not be Members of the Association.

(c) Except for the initial Board selected by Declarant which consists of three members who (and their successors) may hold office so long as Class B membership specified in the Declaration exists, the affairs of the Association shall be managed by a Board of Trustees composed of three (3) individuals. At the first meeting of the Members at which election of

Trustees will take place, the candidate who receives the most votes shall serve as a Trustee for three (3) years. The candidate that receives the third highest number of votes shall serve as a Trustee for two (2) years, and the third candidate which receives the third highest number of votes shall serve as Trustee for one (1) year. At each annual election, the Successor to the Trustee whose term shall expire in that year shall be elected to hold office for the term of three (3) years. Any change in the number of Trustees may be made only by amendment of the Articles. Each Trustee shall hold office until his term expires and until his successor has been duly elected and qualified.

(d) The persons who are to serve as the initial Board selected by the Declarant are as follows:

<u>Name</u>	<u>Address</u>
Stuart Smith	2764 E. 3575 N., Layton, UT 84040
Don Sowell	661 W. Coachman Way, Riverdale, UT 84405

§ 3.3 Regular Meetings of the Board of Trustees

The Board of Trustees may provide, by resolution, the time and place, which shall be held without other notice than such resolution. (If so permitted by § 3.7, any such regular meeting may be held by telephone.)

§ 3.4 Special Meetings of the Board of Trustees

Special meetings of the Board of Trustees may be called by or at the request of the president or any one Trustee. The person or persons authorized to call special meetings of the Board of Trustees may fix any reasonable place as the place for holding any special meeting of the Board of Trustees called by them, or if permitted by § 3.7, such meeting may be held by telephone.

§ 3.5 Notice of, and Waiver of Notice for, Special Trustee Meetings

Unless the articles of incorporation provide for a longer or shorter period, notice of any special Trustee meeting shall be given at least two (2) days previously thereto either orally or in writing. If mailed, notice of any Trustee meeting shall be deemed to be effective at the earlier of: (1) when received; (2) five (5) days after deposited in the United States mail, addressed to the Trustee's business office, with postage thereon prepaid; or (3) the date shown on the return receipt if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the Trustee. Any Trustee may waive notice of any meeting. Except as provided in the next sentence, the waiver must be in writing, signed by the Trustee

entitled to the notice, and filed with the minutes or Association records. The attendance of a Trustee at a meeting shall constitute a waiver of notice of such meeting, except where a Trustee attends a meeting for the express purpose of objecting to the transaction of any business and at the beginning of the meeting (or promptly upon his arrival) objects to holding the meeting or transacting business at the meeting, and does not thereafter vote for or assent to action taken at the meeting. Unless required by the articles of incorporation, neither the business to be transacted at, nor the purpose of, any special meeting of the Board of Trustees need be specified in the notice or waiver of notice of such meeting.

§ 3.6 Trustee Quorum

(a) A majority of the number of Trustees shall constitute a quorum for the transaction of business at any meeting of the Board of Trustees, unless the articles require a greater number.

(b) Any amendment to this quorum requirement is subject to the provisions of § 3.8 of this Article III.

§ 3.7 Trustees, Manner of Acting

(a) The act of the majority of the Trustees present at a meeting at which a quorum is present when the vote is taken shall be the act of the Board of Trustees unless the articles of incorporation require a greater percentage. Any amendment which changes the number of Trustees needed to take action, is subject to the provisions of § 3.8 of this Article III.

(b) Unless the articles of incorporation provide otherwise, any or all Trustees may participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all Trustees participating may simultaneously hear each other during the meeting. A Trustee participating in a meeting by this means is deemed to be present in person at the meeting.

(c) A Trustee who is present at a meeting of the Board of Trustees or a committee of the Board of Trustees when Association action is taken is deemed to have assented to the action taken unless: (1) he objects at the beginning of the meeting (or promptly upon his arrive) to holding it or transacting business at the meeting; or (2) his dissent or abstention from the action taken is entered in the minutes of the meeting; or (3) he delivers written notice of his dissent or abstention to the presiding officer of the meeting before its adjournment or to the Association immediately after adjournment of the meeting. The right of dissent or abstention is not available to a Trustee who votes in favor of the action taken.

§ 3.8 Removal of Trustee

The Homeowners may remove one or more Trustees at a meeting called for that purpose if notice has been given that a purpose of the meeting is such removal. The removal may be

with or without cause unless the articles provide that Trustees may only be removed with cause. If a Trustee is elected by a voting group of Homeowners, only the Homeowners of that voting group may participate in the vote to remove him. A Trustee may not be removed if the number of votes sufficient to elect him under cumulative voting is voted against his removal. If cumulative voting is not authorized, a Trustee may be removed only if the number of votes cast to remove him exceeds the number of votes cast not to remove him.

§ 3.9 Board of Trustee Vacancies

(a) Unless the articles of incorporation provide otherwise, if a vacancy occurs on the Board of Trustees, including a vacancy resulting from an increase in the number of Trustees, the Homeowners may fill the vacancy. During such time that the Homeowners fail or are unable to fill such vacancies then and until the Homeowners act:

- (1) the Board of Trustees may fill the vacancy; or
- (2) if the Trustees remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the Trustees remaining in office.

(b) If the vacant office was held by a Trustee elected by a voting group of Homeowners, only the holders of memberships of that voting group, or two or more remaining Trustees already elected by that voting group, are entitled to vote to fill the vacancy if it is filled by the Homeowners.

(c) A vacancy that will occur at a specific later date (by reason of a resignation effective at a later date) may be filled before the vacancy occurs but the new Trustee may not take office until the vacancy occurs.

(d) The term of a Trustee elected to fill a vacancy expires at the next Homeowners' meeting at which Trustees are elected. However, if his term expires, he shall continue to serve until his successor is elected and qualifies or until there is a decrease in the number of Trustees.

§ 3.10 Trustee Compensation

Unless otherwise provided in the Articles of Incorporation, by the Board of Trustees, no Homeowner or Trustee shall be compensated for participation as a Trustee or member of the Association.

ARTICLE IV. OFFICERS

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§ 4.1 Number of Officers

The officers of the Association shall be a president, a first vice-president, a second vice-president, a secretary, and a treasurer. At the first meeting of the members at which election of Trustees will take place, the Trustee elected to serve for one (1) year shall also serve as president; the Trustee elected for two (2) years shall serve as first vice-president; and the Trustee elected to serve for three (3) years shall serve as the second vice-president. At the next annual election, the successor Trustee chosen to fill the vacancy shall also serve as second vice-president. The former second vice-president shall serve as first vice-president and the former first vice-president shall serve as president, so that the Trustee whose term is beginning shall also serve as second vice-president, the trustee who has two (2) years remaining as a Trustee shall always serve as first vice-president, and the Trustee who has one (1) year remaining as Trustee shall always serve as president. The secretary and treasurer shall be appointed by the Board of Trustees to serve an indefinite term. Such other officers and assistant officers as may be deemed necessary may be appointed by the Board of Trustees.

§ 4.2 Removal of Officers

The president, first vice-president or second vice-president may be removed according to the procedures set forth in paragraph 3.8, Removal of Trustee. Any other officer or agent may be removed by the Board of Trustees at any time, with or without cause.

§ 4.3 President

The president shall be the chief executive and administrative officer of the Association and, subject to the control of the Board of Trustees, shall in general supervise and control all of the business and affairs of the Association. He shall preside at all meetings and exercise such duties customarily pertaining to the office of president.

§ 4.4. First Vice-President

The first vice-president shall be the chief executive and administrative officer of the Association in the absence of the president. In the absence of the president, he shall preside at all meetings and exercise such duties customarily pertaining to the office of president. He shall also perform duties assigned to him by the president pertaining to the business and affairs of the Association.

§ 4.5 Second Vice-President

The second vice-president shall be the chief executive and administrative officer of the Association in the absence of the president and first vice-president. In the absence of the

president and the first vice-president, he shall preside at all meetings and exercise such duties customarily pertaining to the office of president and the first vice-president. He shall also perform duties assigned to him by the president and first vice-president pertaining to the business and affairs of the Association.

§ 4.6 Secretary

The secretary shall: (a) keep the minutes of the proceedings of the Home Owner Association and of the Board of Trustees in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these bylaws, the Declarations or as required by law; (c) be custodian of the Association records and of any seal of the Association and if there is a seal of this Association, see that it is affixed to all documents the execution of which on behalf of the Association under its seal is duly authorized; (d) when requested or required, authenticate any records of the Association; (e) keep a register of the post office address of each Homeowner which shall be furnished to the secretary by such Homeowner; and, (f) in general perform all duties incident to the office of secretary and other duties as from time to time may be assigned to him by the president.

§ 4.7 Treasurer

The treasurer shall, subject to the direction of the president, have general charge of and custody of and be responsible for the funds of the Association and their collection and disbursement.

§ 4.8 Salaries

No officer, Trustee or Homeowner shall be compensated in any manner or receive any wage or salary associated with their participation or membership as a Trustee, Homeowner or officer.

ARTICLE V. INDEMNIFICATION OF TRUSTEES, OFFICERS, AGENTS, AND EMPLOYEES

§ 5.1 Indemnification of Trustees

Unless otherwise provided in the articles, the Association shall indemnify any individual made a party to a proceeding because he is or was a Trustee of the Association, against liability incurred in the proceeding, but only if such indemnification is both (i) determined permissible and (ii) authorized, as defined in subsection (a) of this § 5.1. (Such indemnification is further subject to the limitation specified in subsection (c).) References to the Utah Revised Business Corporation Act are for procedural guidance for this indemnification section only, and are done only by analogy. Power to indemnify is derived from the Utah Non-Profit Corporation and Co-Operative Association Act, Utah Code Annotated § 16-6-22(14).

(a) *Determination and Authorization.* The Association shall not indemnify a Trustee under this § 5.1 of Article V unless:

(1) *Determination.* A determination has been made in accordance with the procedures set forth in The Utah Revised Business Corporation Act § 16-10a-906(2) that the Trustee met the standard of conduct set forth in subsection (b) below, and

(2) *Authorization.* Payment has been authorized in accordance with the procedures set forth in The Utah Revised Business Corporation Act § 16-10a-906(4) based on a conclusion that the expenses are reasonable, the Association has the financial ability to make the payment, and the financial resources of the Association should be devoted to this use rather than some other use by the Association.

(b) *Standard of Conduct.* The individual shall demonstrate that:

(1) he conducted himself in good faith; and

(2) he reasonably believed that his conduct was in, or not opposed to, the Association's best interests;

(3) in the case of any criminal proceeding, he had no reasonable cause to believe his conduct was unlawful.

The Association shall not indemnify a Trustee under this § 5.1 of Article V:

(1) in connection with a proceeding by or in the right of the Association in which the Trustee was adjudged liable to the Association; or

(2) in connection with any other proceeding charging improper personal benefit to him, whether or not involving action in his official capacity, in which he was adjudged liable on the basis that personal benefit was improperly received by him.

(c) *Indemnification in Derivative Action Limited.* Indemnification permitted under this § 5.1 Article V in connection with a proceeding by or in the right of the Association is limited to reasonable expenses incurred in connection with the proceeding.

§ 5.2 Indemnification of Officers, Agents, and Employees Who Are Not Trustees

Unless otherwise provided in the articles of incorporation, the Board of Trustees may indemnify and advance expenses to any officer, employee, or agent of the Association, who is not a Trustee of the Association, to any extent consistent with public policy, as determined by the general or specific action of the Board of Trustees.

ARTICLE VI. ASSOCIATION SEAL

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§ 6.1 Association Seal

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The Board of Trustees may but is not required to provide a Association seal which may be circular in form and have inscribed thereon any designation including the name of the Association, Utah as the state of incorporation, and the words "Association Seal".

ARTICLE VII. AMENDMENTS

§ 7.1 Amendments

The Board of Trustees may amend or repeal the Association's bylaws unless:

(1) the articles of incorporation, Declaration, bylaws or the Utah Non-Profit Corporation and Co-Operative Association Act reserve this power exclusively to the Homeowners in whole or in part; or,

(2) the Declaration or bylaws either establishes, amends, or deletes, a super-majority Homeowner quorum or voting requirement (as defined in § 2.8 of Article II).

Any amendment which changes the voting or quorum requirement for the board must comply with Article III, § 3.8, and for the Homeowners, must comply with Article II, § 2.8.

The Association's Homeowners may amend or repeal the Association's bylaws even though the bylaws may also be amended or repealed by its Board of Trustees.

ARTICLE VIII. LIEN FORECLOSURES

§ 8.1 Lien Foreclosures

(a) As stated in and subject to the terms of the Declaration, unpaid assessments, interest and other costs associated therewith shall become a lien of the Association against the lot or lots owned by the member failing to pay such assessments and costs, as well as a personal obligation of the member to the Association. Notice of the lien may be given by the Association, and the lien shall be perfected, by proper recordation in the office of the county recorder of Davis County, State of Utah, of a notice of claim of lien, properly notarized and executed by any trustee, the president or the secretary, setting forth:

(1) A description of the real property against which the lien is claimed.

(2) The amount of the lien plus accrued interest, costs and attorney's fees accruing prior to the date of recordation.

(3) A reference to this Section of the Bylaws together with a general reference to the Declaration, asserting the same as authority for placing the lien.

(4) A notice to the homeowner or member that this lien maybe foreclosed in accordance with this Section of the Bylaws and as otherwise provided by law.

(5) A notice that the principal amount of lien claimed shall continue to accrue interest at the rate established by the Declaration or as amended therein from time-to-time, until paid in full.

(b) Any lien claimed pursuant hereto shall be deemed a consensual lien between the homeowner and the Association.

(c) Any lien claimed pursuant hereto may be foreclosed in the manner provided by law for the foreclosure of deeds of trust.

(d) The prevailing party in any lien foreclosure action brought pursuant hereto shall be entitled to recover costs of suit, including but not limited to reasonable costs of suit.

ARTICLE IX. ESTABLISHMENT OF PUBLISHED RULES FOR THE USE OF COMMON AREA

The Board of Trustees shall publish to all members and shall publish to all members and shall make available at all times an updated version of separate "Smithtowne Home Owner Association Rules and Regulation."

ARTICLE X. COVENANT TO RUN WITH THE LAND

These Bylaws, as amended from time-to-time, along with the Declaration, shall constitute a covenant running with the land, and any homeowner purchasing any lot of the Smithtowne Subdivision, a Planned Residential Unit Development, Davis County, Utah, shall be obligated to abide by all of the covenants and conditions contained herein, as may be amended from time-to-time.

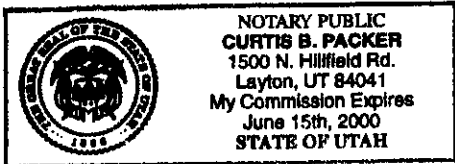


Stuart A. Smith, President
Mainline Construction, Inc.

STATE OF UTAH)
 :SS.
COUNTY OF WEBER)

SUBSCRIBED AND SWORN to before me by Stuart A. Smith on this 19th day of Feb, 1997.

Residing at:

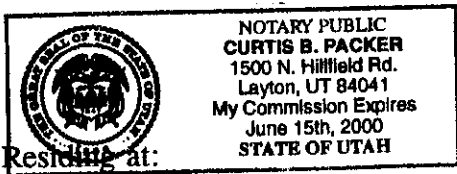


Curtis B. Packer
NOTARY PUBLIC
Commission Expires: June 15, 2000

Stuart A. Smith
Stuart A. Smith
Owner, Lot No. 1

STATE OF UTAH)
) :SS.
COUNTY OF WEBER)

SUBSCRIBED AND SWORN to before me by Stuart A. Smith on this 19th day of Feb, 1997.

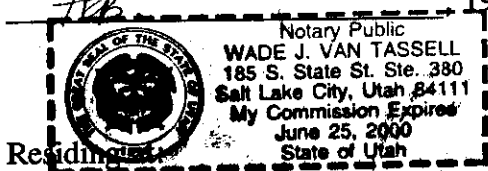


Curtis B. Packer
NOTARY PUBLIC
Commission Expires: June 15, 2000

Armel O. Beardall
Armel O. Beardall
Owner, Lot No. 2

STATE OF UTAH)
) :SS.
COUNTY OF WEBER)

SUBSCRIBED AND SWORN to before me by Armel O. Beardall on this 25th day of Feb, 1997.



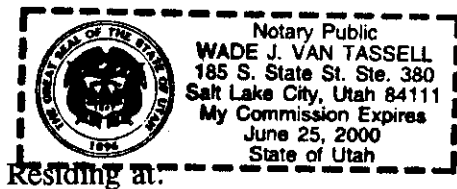
Wade J. Van Tassel
NOTARY PUBLIC
Commission Expires:

Lanni Beardall

Lanni Beardall
Owner, Lot No. 2

STATE OF UTAH)
) :ss.
COUNTY OF WEBER)

SUBSCRIBED AND SWORN to before me by Lanni Beardall on this 26TH day of FEB, 1997.



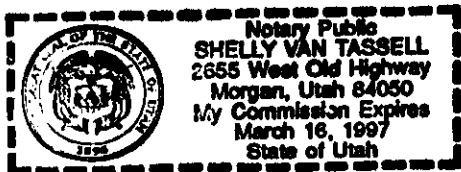
Wade J. Van Tassell
NOTARY PUBLIC
Commission Expires:

Wade J. Van Tassell
Wade J. VanTassell
Owner, Lot No. 3

STATE OF UTAH)
) :ss.
COUNTY OF WEBER)

SUBSCRIBED AND SWORN to before me by Wade J. VanTassell on this 20th day of February, 1997.

Residing at:



Shelly Van Tassell
NOTARY PUBLIC
Commission Expires:

Heather Petersen
Heather Petersen
Owner, Lot No. 3

STATE OF UTAH)
 :SS.
COUNTY OF WEBER)

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E 1306696 8 2099 P 1155

SUBSCRIBED AND SWORN to before me by Heather Petersen on this 20th day of February, 1997.

Shelly Van Tassell
NOTARY PUBLIC
Commission Expires:

Residing at:

