

GLEN EAGLES LLC  
470 EAST 3900 SOUTH, #200  
SALT LAKE CITY, UTAH 84107

E 160873 B 0668 P 0740  
Date 23-MAR-2001 11:56am  
Fee: 249.00 Check  
CALLEEN B. PESHELL, Recorder  
Filed By LMO  
For FIRST AMERICAN TITLE INS CO  
TOOELE COUNTY CORPORATION

**GLENEAGLES**

**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR GLENEAGLES ("Declaration") is made this 21 day of March, 2001, by CHESAPEAKE MEADOWS, L.L.C., a Utah limited liability company having an address at c/o Hamlet Homes Corporation, 470 East 3900 South, Suite 200, Salt Lake City, Utah 84107 (referred to as "Declarant").

**RECITALS**

A. Declarant is the record owner of the real property situated in Tooele County, Utah, which is more particularly shown on Exhibit "A" attached hereto and incorporated herein ("Property").

B. Declarant desires to establish covenants, conditions and restrictions upon the Property and each and every portion thereof, which will constitute a general scheme for the management of the Property and for the use and occupancy thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and enhancing the quality of life therein.

C. Gleneagles (as such term is hereinafter defined) will consist of residential and commercial areas. Declarant may, but shall not be required to, annex additional property to Gleneagles.

D. Declarant may add all or any of the real property described in Exhibit "B" attached hereto and incorporated herein to the Property already subject to this Declaration by Annexation (as hereinafter defined), and said additional property so annexed with thereupon be subject to this Declaration, become a part of and included within the definition of the Property, and be developed as a part of Gleneagles.

E. Gleneagles Community Association, Inc., a nonprofit, non-stock corporation, has been incorporated under the laws of the State of Utah for the purpose of exercising the powers and functions set forth herein.

F. Declarant will hereafter hold and convey title to all of the Property subject to certain protective covenants, conditions and restrictions hereinafter set forth.

**ARTICLE I  
DECLARATION**

1.1. Declarant hereby covenants, agrees and declares that all of the Property is, and shall be, held, conveyed, encumbered, hypothecated, leased, rented, used, occupied and improved subject to the following limitations, covenants, conditions, restrictions, easements, liens and charges which are hereby declared and agreed to be in furtherance of a general plan for the subdivision, improvement, protection, maintenance and sale of all of the Property and all of which are declared and agreed to be for the purpose of enhancing, maintaining and protecting the value and attractiveness of the Property and every part thereof. All of the limitations, covenants, conditions, restrictions, easements, liens and charges are equitable servitude and shall run with

the land and shall be binding upon and inure to the benefit of all parties having or acquired any right, title or interest, in the Property or any part thereof, and shall be binding on and inure to the benefit of each successor in interest of such parties. Declarant hereby declares that all of the Property described in Exhibit "A" shall be subject to this Declaration and shall constitute the initial increment of land subject to this Declaration. Declarant declares that, pursuant to the terms hereof regarding Annexation of real property, all or any portion of the real property described on Exhibit "B" may be annexed and become subject to this Declaration and, upon such Annexation, such annexed property shall be subject to the limitation, restrictions, easements, covenants, conditions, liens and charges of this Declaration.

## **ARTICLE II DEFINITIONS**

Unless this context clearly indicates otherwise, the following terms used in this Declaration are defined as set forth below.

2.1. Annexable Property shall mean any or all of the real property described on Exhibit "B" which may be made subject to this Declaration by Annexation pursuant to the provisions set forth herein.

2.2. Annexation shall mean the process by which the additional real property described in Exhibit "B" attached hereto may be made subject to this Declaration as set forth herein.

2.3. Apartment Building shall mean and refer to any apartment building constructed on the Apartment Property.

2.4. Apartment Owner shall mean and refer to the Owner of any portion of the Apartment Property; provided, however, if an Apartment Owner leases a portion of the Apartment Property pursuant to a ground lease, the lessee thereof shall be deemed the Apartment Owner as to such leased portion if such lease so provides and such lease is filed with the Community Board. In such event, such lessee shall have all of the rights and obligations of an Apartment Owner under this Declaration as to such leased portion for the term of said lease.

2.5. Apartment Property shall mean and refer to the land on which the Apartment Building is situated, which land is labeled "Apartment Property" on Exhibit "B".

2.6. Apartment Unit shall mean and refer to a residential apartment in an Apartment Building located within the Apartment Property.

2.7. Architectural Committee shall mean and refer to the committee provided for herein.

2.8. Architectural Standards shall mean and refer to the rules and standards promulgated by the Community Board (as such term is defined below) for implementation by the Architectural Committee.

2.9. Assignment of Declarant's Rights shall mean and refer to the assignment agreement executed and recorded by Declarant in order to assign Declarant's rights to a successor Declarant pursuant to the provisions of this Declaration.

2.10. Builder or Builders shall mean a person, persons, entity or entities who acquire or acquires a portion of the Property (or a portion of the Annexable Property which is annexed as provided herein) for development as a Neighborhood, Apartment Building or Commercial Property, or any other person, persons, entity or entities identified by Declarant as a Builder in a Supplementary Declaration.

2.11. Commercial Property shall mean and refer to any real property labeled as Commercial Property and/or any real property described by Declarant as Commercial Property in a Supplementary Declaration which is subject to this Declaration and is developed or to be developed with Improvements for commercial uses.

2.12. Commercial Property Owners and Commercial Property Owners Association shall mean and refer to the owners of properties within the Commercial Property and any organization which may be formed, among other things, for the purpose of maintaining and operating any common area portion of the Commercial Property for the common benefit of some or all of the Commercial Property Owners.

2.13. Common Expenses shall mean and refer to the actual and estimated costs and expenses approved by the Community Board and incurred or to be incurred by the Community Association, the Community Board or the Architectural Committee, including, but not limited to, the following:

2.13.1. due but unpaid Community Assessments (as hereinafter defined);

2.13.2. maintenance by the Community Association of areas within the public right-of-way of public streets in the vicinity of the Property as provided in this Declaration or pursuant to agreements with Tooele County;

2.13.3. costs of management and administration of the Community Association, including, but not limited to, compensation paid by the Community Association to managers, accountants, attorneys, architects, consultants and employees;

2.13.4. the costs of utilities, trash pickup and disposal, gardening and other services benefiting the Owners and their Lots to the extent such services are paid for by the Community Association;

2.13.5. the costs of any other insurance obtained by the Community Association pursuant to the provisions of this Declaration;

2.13.6. reasonable reserves as deemed appropriate by the Community Board;

2.13.7. the costs of bonding of the members of the Community Board;

2.13.8. taxes paid by the Community Association;

2.13.9. costs incurred by the Architectural Committee or other committees of the Community Association; and

2.13.10. the costs of any other item items designated by or in accordance with

other expenses incurred by the Community Association for any reason whatsoever in connection with the discharge of any obligations imposed on the Community Association by this Declaration, the Community Articles or Community Bylaws.

2.14. Community Articles shall mean and refer to the Articles of Incorporation of the Community Association, as the same may from time to time be duly amended.

2.15. Community Assessments shall mean and refer collectively or individually, as required by the context, to all or any of the assessments levied by the Community Association pursuant to the provisions hereof and shall include, without limitation, the Community Assessments defined below.

2.15.1. Regular Assessment. The terms "Regular Assessment" or "Regular Assessments" shall mean the amount which is to be paid by each Owner to the Community Association for Common Expenses as described in this Declaration.

2.15.2. Special Assessment shall mean an assessment levied by the Community Board if the Community Board determines that the Regular Assessments will be inadequate pursuant to the provisions of Subsection 5.4.2 of this Declaration.

2.15.3. Enforcement Assessment shall mean a charge assessed against any Owner and his Lot to reimburse the Community Association for costs incurred in bringing the Owner and his Lot into compliance with the provisions of this Declaration pursuant to Subsection 5.4.3 of this Declaration.

2.16. Community Association shall mean and refer to Gleneagles Community Association, Inc., a corporation incorporated under the laws of the State of Utah, or any successor entity charged with the duties, obligations and powers of said Community Association.

2.17. Community Board shall mean and refer to the Board of Directors of the Community Association.

2.18. Community Bylaws shall mean and refer to the Bylaws of the Community Association, as the same may from time to time be amended.

2.19. Community Directors shall mean the members of the Community Board elected pursuant to the provisions hereof.

2.20. Community Association Rules shall mean and refer to the rules and regulations adopted by the Community Board for the governance of Gleneagles.

2.21. Condominium shall mean any condominium unit within Gleneagles established pursuant to the Utah Condominium Act or any similar statute hereinafter enacted, and shall refer only to residential Condominiums unless otherwise expressly stated.

2.22. Declarant shall mean Chesapeake Meadows, L.L.C. shall include those respective successors and assigns of Declarant who acquire or hold title to any part or all of the Property for purposes of development and are expressly named as successor Declarant in an Assignment of Declarant's Rights executed by Declarant or by a successor Declarant, and recorded in the Land

Records (defined below), assigning the rights and duties of Declarant to such successor Declarant, with such successor Declarant accepting and assuming the assignment of such rights and duties.

A successor Declarant shall also be deemed to include the beneficiary under any Deed of Trust securing an obligation from a then existing Declarant encumbering all or any portion of the Property, which beneficiary has acquired any such property by foreclosure or deed in lieu of foreclosure.

2.23. Development Period shall mean and refer to the time between the date of recordation of this Declaration among the Land Records and the date on which the last Lot is conveyed to an Owner by Declarant or Builder.

2.24. Dwelling shall mean (a) the residential dwelling unit together with any garages and other Structures on the same Lot, (b) in the case of a Condominium, all elements of a "unit" conveyed to an Owner, as "unit" as defined in the condominium declaration and plat recorded for said Condominium pursuant to the Utah Condominium Act, and (c) in the case of an Apartment Building, each Apartment Unit.

2.25. First Mortgage shall mean and refer to a first mortgage or deed of trust which encumbers any one (1) or more Lots, or other parcels of real property in Gleneagles and has priority over any other mortgage or deed of trust encumbering such Lot or other parcels, and shall include any First Mortgage or deed of trust securing an obligation of Declarant, Builder, or an Owner, and encumbering all or any part of the Property.

2.26. Improvement shall mean and refer to all Structures and appurtenances thereto of every type and kind, including but not limited to, residences, and other buildings, outbuildings, walkways, pedestrian and bicycle trails, utility installation, swimming pools, garages, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, awnings, patio and balconies, stairs, decks, landscaping, hedges, slopes, windbreaks, the exterior surfaces of any visible structure, plantings, planted trees and shrubs, antennae, poles, signs, solar or wind powered energy systems or equipment, heater and air conditioning and heating fixtures or equipment; the demolition or destruction by voluntary action of any Structure or appurtenance thereto of every type and kind; the grading, excavation, filling or similar disturbance to the surface of the land including, without limitation, change of grade, change of landscaping, planting, clearing or removing of trees, shrubs, grass or plants; and any change or alteration of any previously approved Improvement including any change of exterior appearance, color or texture.

2.27. Institutional Mortgagee shall mean and refer to a Mortgagee which is a bank, savings bank or savings and loan association or established mortgage company, or other such entity chartered under federal or state laws, any corporation or insurance company, any federal or state agency, or any other institution specified by the Community Board in a recorded instrument, who is the Mortgagee of a Mortgage or beneficiary of a Deed of Trust encumbering a Lot.

2.28. Land Records shall mean and refer to the Office of the County Recorder of Tooele County, Utah.

2.29. Lot shall mean and refer to any and all of the following which are subject to this Declaration: (a) any improved or unimproved residential or commercial lot or parcel shown on any recorded final subdivision map or any recorded parcel map to the extent such lots or parcels are part of the Property; (b) any Condominium in Gleneagles; (c) Unsubdivided Property (as hereinafter

defined); and (d) subject to the provisions hereof, the portion of the Apartment Property in Gleneagles owned by an Apartment Owner, even though such portion may contain more than one (1) apartment building. The term "Lot" shall not include of any Neighborhood Common Area, unless otherwise provided.

2.30. Maintenance and Operation Fund shall mean and refer to the fund which shall be established by the Community Association for the deposit of Regular Assessments.

2.31. Master Management Documents shall mean and refer to the Community Articles, Community Bylaws, Community Association Rules and this Declaration, and any amendments to any of the foregoing.

2.32. Member or Members shall mean and refer to every person or entity who qualifies for membership pursuant to this Declaration, including Declarant, as long as Declarant qualifies for membership.

2.33. Mortgage means a recorded mortgage or deed of trust encumbering any Property and any other security interest therein existing under another security document. Mortgagee shall mean and refer to the mortgagee or beneficiary under any Mortgage. First Mortgagee shall refer to a Mortgagee whose First Mortgage has priority over any other Mortgage encumbering a specific Lot.

2.34. Neighborhood shall mean all residential Lots, improved or unimproved, and Neighborhood Common Area, if any, of a separate subdivision or development within Gleneagles for which a separate residential condominium or homeowner's association, other than the Community Association, is formed to govern and control the operation of the Neighborhood Association and maintenance of the Neighborhood, and which is encumbered by a Neighborhood Declaration. Neighborhood shall also mean the aggregate of the Single Family Lots and collectively to the Apartment Units, each of which shall constitute one (1) Neighborhood and not be encumbered by a Neighborhood Declaration (as such term is hereinafter defined), formal Neighborhood Association, Neighborhood Board or Neighborhood Common Area, but shall otherwise be subject to the provisions of this Declaration, where applicable. Neighborhoods may be established by the Declarant in increments compatible with construction and marketing requirements.

2.35. Neighborhood Assessments shall mean assessments determined pursuant to any Neighborhood Declaration which are levied exclusively on Lots contained in a particular Neighborhood.

2.36. Neighborhood Association shall mean the governing body of a Neighborhood which is created pursuant to the Neighborhood Declaration and the articles of incorporation and bylaws therefor.

2.37. Neighborhood Board shall mean the governing body of a Neighborhood Association as established pursuant to the Neighborhood Declaration and the articles of incorporation and bylaws for the Neighborhood Association.

2.38. Neighborhood Common Area shall mean the area within the boundaries of a Neighborhood owned by the Neighborhood Association or collectively by the Owners of Lots within the Neighborhood in common, and restricted to use primarily by such Owners, their lessees and invitees.

2.39. Neighborhood Declaration shall mean the covenants, conditions and restrictions recorded with respect to each Neighborhood, including the declarations providing for annexation of increments, if any, to a particular Neighborhood.

2.40. Owner shall mean and refer to one or more persons or entities who are along or collectively the record owner of a fee simple title to a Lot, including Declarant and Builders unless the context provides otherwise. Owner shall mean an owner any condominium unit within Gleneagles established pursuant to the Utah Condominium Act or any similar statute hereinafter enacted. If more than one (1) person, firm, corporation, trustee, or other legal entity, or any combination thereof, hold the record title to any one Lot, whether in a real property tenancy, partnership relationship, or otherwise, all of same, as a unit, and not otherwise, shall be deemed a single record owner and shall be or become a single Member of the Community Association by virtue of ownership of such Lot. The term "Owner," however, shall not include any contract purchaser, nor the owner of any redeemable ground rent issuing out of any lot, nor shall it include any Mortgagee, trustee or other grantee named in any mortgage, deed of trust or other security instrument covering any lot, designed solely for the purpose of securing performance of an obligation or payment of a debt. The fee owner of a Lot within the Apartment Property shall be deemed to be an Owner subject to the provisions hereof pertaining to Apartment Property Ownership. If fee titled to a Lot, including a Lot within the Apartment Property is owned other than by Declarant, the Owner of the fee title and not the lessee of such Lot shall be deemed the Owner except as otherwise provided herein.

2.41. Property shall mean and refer to all the real property described on Exhibit "A" attached hereto and, subsequent to the Annexation thereof pursuant to this Declaration, any real property which shall become subject to this Declaration. In the event of the de-annexation of any Property previously subject to this Declaration, the term "Property" shall not be deemed to include any such de-annexed land.

2.42. Reserve Fund shall mean and refer to the fund which may be established from time to time by the Community Association for the deposit of any reserve Community Assessments.

2.43. Residential Property shall mean and refer to any Lots on which Dwellings are to be constructed. Residential Property shall not include Commercial Property.

2.44. Single Family Lots shall mean legally subdivided lots each improved or to be improved with one (1) residence for sale to members of the public.

2.45. Structure shall mean and refer to anything erected, constructed, placed or installed upon (i) the portion of a Lot between the front or side of a Dwelling and the contiguous street or Lot, or (ii) upon the portion of a Lot behind a Dwelling and to a height of three (3) feet or more above the established ground level.

2.46. Supplementary Declarations shall mean those certain declarations of covenants, conditions and restrictions, or similar instruments, annexing any portion of the Annexable Property and extending the plan of this Declaration to such Annexable Property as provided in the Article XII hereof entitled "Annexation of Real Property."

2.47. Gleneagles shall mean and refer to all of the Property and Improvements situated

thereon which is, from time to time, subject to this Declaration.

2.48. Gleneagles Funds shall mean and refer collectively to all of the funds established by the Community Association for the deposit of Community Assessments.

2.49. Gleneagles Voting Power, or "voting power", or "total voting power", shall each mean and refer to the total number of votes allocated to all Members of classes A, B and C entitled to vote from time to time as set forth herein.

2.50. Unsubdivided Property shall mean any real property subject to this Declaration, excluding, Apartment Properties and Commercial Property, which is owned by Declarant or Builders and consists of one (1) or more Lots which are more than two (2) acres in site.

2.51. Zoning Laws shall mean all zoning laws, ordinances and the like affecting the Property.

### **ARTICLE III** **MEMBERSHIP IN THE COMMUNITY ASSOCIATION**

#### 3.1 Membership.

3.1.1 Qualifications. Members of the Community Association shall be (i) Declarant (irrespective of whether Declarant is the Owner of a Lot), until the date Declarant or any Builder no longer owns any property subject to this Declaration or any Annexable Property, (ii) each Owner of a Single Family Lots, and (iii) each Owner of any Commercial Property or Apartment Property. Each Owner of Apartment Property and Commercial Property shall become a Member of the Community Association when any portion of such property, as identified by Declarant in a Supplementary Declaration, is annexed into the Community Association. Membership in the Community Association shall be subject to this Declaration, the Community Articles, the Community Bylaws, and the Community Association Rules.

#### 3.1.2. Classes of Voting Memberships.

The Community Association shall have two (2) classes of voting memberships:

(a) Class A member: Except for the Declarant, who shall initially be the Class B member, a Class A member shall be a record owner holding title to one or more Lots laid out in the Community as well as any Owner of Commercial Property and Apartment Property, or in any part of such additional property that may be brought within the jurisdiction of the Corporation. Each Class A member shall be entitled to one (1) vote per Lot, for each such Lot owned by such member, in all proceedings in which action shall be taken by members of the Corporation; provided, however, that each Owner of an Apartment Property shall be entitled to cast one (1) vote for each Apartment Unit build on the Apartment Property and further, provided, that each Owner of a Commercial Property shall be entitled to cast one (1) votes for every one thousand (1,000) square feet of gross floor area built on such Commercial Property as measured from outside exterior walls. If and when any Commercial Property is annexed to this Declaration, such Commercial Property shall have the number of votes described in a Supplementary Declaration.



(b) Class B member: The Class B member shall be the Declarant. The Class B member shall be entitled to three (3) votes per Lot, for each such Lot owned by such member, in all proceedings in which the action shall be taken by members of the Corporation. For any Unsubdivided Property which is subject to this Declaration, there shall be five (5) votes for each dwelling unit allocated to the Unsubdivided Property.

(c) Conversion: The Class B membership shall be converted to a Class A membership upon the earlier to occur of: (i) December 31, 2011; or (ii) at such time as the total number of votes entitled to be cast by Class A members of the Corporation equals or exceeds the total number of votes entitled to be cast by the Class B members of the Corporation. After such conversion, if additional property is made subject to the Declaration then the Class B membership of the Class B member shall be reinstated until December 31, 2015 or such earlier time as the total number of votes entitled to be cast by Class A members again equals or exceeds the total number of votes entitled to be cast by the Class B member.

#### **ARTICLE IV**

#### **DUTIES AND POWERS OF THE ASSOCIATION**

4.1. Scope of Powers and Duties of Community Association. The Community Association shall have all of the powers of a corporation organized under the laws of the State of Utah operating for the benefit of the Owners, subject only to the limitations expressly set forth in the Community Articles, Community Bylaws and this Declaration. The Community Association shall have the power to do any and all acts which are authorized, required or permitted under this Declaration and to undertake any and all acts which may be reasonable and necessary for, or incidental to the exercise of any express powers granted the Community Association for the peace, health, comfort, safety or general welfare of Gleneagles. Except as expressly provided herein, the powers and duties of the Community Association shall be exclusively performed by the Community Association. As particularly provided in this Declaration, the Community Association may supersede the actions of decisions of any Neighborhood Association in matters regarding the maintenance and overall operation of any such Neighborhood.

4.2. General Powers of the Association. In addition to the duties and powers enumerated elsewhere in this Declaration or in the Community Articles or Community Bylaws, and without limiting the generality thereof, the Community Association shall have the powers and authority set forth below, which, unless expressly provide otherwise, may be undertaken by the Community Board; or such committees, entities, persons or companies expressly designated by the Community Board to exercise such powers or authority :

4.2.1. Performance of Duties. to undertake all of the express duties required under Section 4.3 below to be done by the Community Association.

4.2.2. Enforcement. to enforce the provisions of this Declaration, the Community Articles and the Community Bylaws by appropriate means and carry out the obligations of the Community Association hereunder, including, without limitation, the expenditure of funds of the Community Association, the employment of legal counsel and experts the commencement of legal and/or equitable actions, the promulgation and enforcement of the Community Association Rules, and the establishment of fines or penalties as provided for in this Declaration.

4.2.3. Mergers. to the extent permitted by law, to participate in mergers and consolidations with other nonprofit corporations organized for the same purposes as the Community Association.

4.2.4. Dedication. to dedicate in fee simple or in any lesser estate or grant easements over any of its real property to any governmental body or agency, public authority, private or public utility company, or other service companies, for public use or in connection with providing services to Gleneagles.

4.2.5. Delegation of Powers. to delegate its powers under this Declaration, the Community Bylaws or Community Articles to committees, officers, or employees as expressly authorized by the Community Articles, Community Bylaws and this Declaration.

4.2.6. Management. subject to the provisions of Section 4.4 of this Declaration, to employ a manager or other person and contract with independent contractors or managing agents who have professional experience in the management of condominium developments, planned unit developments or master associations, to perform any services required for the maintenance, protection, operation and preservation of Gleneagles.

4.2.7. Legal and Accounting. to obtain legal and accounting services as may be required by the Community Board for operation of the Community Association or enforcement of this Declaration.

4.2.8. Right of Entry. in accordance with the provisions of this Declaration, to enter upon any Lot or Neighborhood Common Area without liability to any Owner, for the purpose of enforcing any of the provisions of this Declaration, or for the purpose of maintaining and repairing the Dwellings, landscaping or other Improvements located on any Lot or any Neighborhood Common Area, or for the purpose of maintaining any slopes located on any Lots; provided, however, that such entry shall occur (a) at a reasonable hour and (b) after reasonable notice has been given to the Owner of such Lot. If there is an emergency, the agents and representatives of the Community Board may enter such Lot immediately and without notice for the sole purpose of taking such action as is necessary under the circumstances. Any damage caused by an entry upon any Lot or Neighborhood Common Area pursuant to the provisions of this Subsection shall be repaired by the Community Association. This right of entry does not grant the right to enter into a private home or condominium.

4.2.9. Acquire Real Property. to acquire and hold real property by lease or purchase that may be necessary or convenient for the management of the Community or for the benefit of the Members and Owners.

4.2.10. Other Property. to acquire and hold, as trustee for the benefit of its Members, tangible and intangible personal property and to dispose of the same by sale or otherwise. No such personal property of a value greater than five percent (5%) of the budgeted gross expenses of the Community Association shall be acquired by or disposed of by the Community Association without written approval of the Members representing at least fifty-one (51%) of Gleneagles Voting Power.

4.2.11 Resolution of Disputes. to negotiate with, bring all actions at law or equity, and enter into settlement agreements with Declarant concerning any matter involving liability of or alleged liability of Declarant to the Community Association.

4.2.12. Borrow Money. to borrow money as needed for the administration of the Community Association and its functions.

4.2.13. Review of Neighborhood Operations. the right, but not the obligation, to review periodically the operation of any Neighborhood Associations within Gleneagles and the maintenance and repair of the property within such Neighborhoods. As provided in this Declaration, the Community Association may take such steps as the Community Board deems appropriate to assure that the operation of any Neighborhoods within Gleneagles substantially complies with the standards established for Gleneagles.

4.2.14. Enforcement of Restrictions and Rules. in the event of a breach of any provision of this Declaration, or any of the Community Association Rules by any Owner, the Owner's family, guests, employees, invitees, licensees, or tenants, the Community Board, for and on behalf of all other Owners, shall have the right (but not the obligation) to enforce the obligations of each Owner to obey and comply with this Declaration and such Community Association Rules in any manner provided by law or in equity, including, but not limited to, appropriate hiring of legal counsel or the pursuing of legal action. In addition to the other remedies herein set forth, the Community Board, by majority vote, may levy a fine against such Owner, after appropriate notice and hearing as herein provided, in a reasonable amount for each such violation. Prior to reaching a decision to impose any penalty provided herein for breach of any rules enacted hereunder or any covenants, conditions or restrictions contained in this Declaration, the Community Board shall send written notice to the Owner specifying the nature of the infraction and provide an opportunity to the Owner for a hearing before the Community Board regarding such infraction and the penalty to be imposed. Said notice shall be given at least fifteen (15) days prior to said hearing. If the Community Board determines that said infraction has occurred, it may impose a penalty to become effective not less than five (5) five days after said hearing. Any such determination of said Community Board shall be final. If legal counsel is retained or legal action is instituted by the Community Board pursuant to this Section, any settlement prior to judgment or any judgment rendered in any such action shall include costs of collection, court costs, expert fees, litigation expenses and reasonable attorneys' fees. The Community Board may establish a hearing committee and delegate thereto all of the power, authority and responsibility for holding any hearings and determinations required in this Section. Notwithstanding anything to the contrary herein contained, neither the Community Board nor the Community Association members shall have the power to cause a forfeiture or abridgement of an Owner's right to the full use of his individually owned Lot, on account of such Owner's failure to comply with the provisions of this Declaration, the Community Bylaws or any Community Association Rules adopted by the Community Board or the Community Association except when such loss or forfeiture is the result of a judgment of a court or a decision arising out of arbitration.

4.2.15. Enter Into Maintenance or Subsidy Agreements. to enter into maintenance agreements or subsidy agreements with Declarant for the undertaking by Declarant for any other maintenance responsibilities of the Community Association pursuant to the provisions of this Declaration.

4.3 Duties of the Community Association. The Community Association shall have the duty and obligation to perform the acts and functions stated in this provision subject to and in accordance with the Community Articles, Community Bylaws and this Declaration:

4.3.1. Community Standards. The Community Association shall establish and maintain overall quality standards for Gleneagles compatible with Declarant's development of Gleneagles. The inherent powers and duties emanating therefrom may be delegated by the Community Board to the Architectural Committee.

4.3.2. Community Assessments. The Community Association shall establish, determine, levy, collect, and enforce all Community Assessments and cause to be prepared all budgets and financial statements.

4.3.3. Architectural Control. The Community Association shall have the duty to maintain architectural control over the Property, promulgate Architectural Standards and appoint the Architectural Committee in connection therewith in accordance with the provisions of this Declaration.

4.3.4. Association Rules. The Community Association shall adopt, amend, and repeal such rules and regulations as it deems reasonable. The Community Association Rules shall govern such matters in furtherance of the purposes of the Community Association, provided, however, that the Community Association Rules may not discriminate among Owners, except to reflect the different nature of the rights of Apartment Property Owners or the tenants of Apartment Units, or Commercial Property Owners and shall not be inconsistent with this Declaration, the Community Articles or Community Bylaws. A copy of the Community Association Rules, as they may from time to time be adopted, amended or repealed, shall be delivered to each Owner in the same manner established in this Declaration for the delivering of notices. Upon such delivery, said Community Association Rules shall have the same force and effect as if they were set forth in and were part of this Declaration. The Community Association Rules as adopted, amended or repealed, shall be available at the principal office of the Community Association to each Owner and Institutional Mortgagee upon request or at such other place as may be designated by the Community Board. In the event of any conflict between any such Community Association Rules and any other provision of this Declaration, the Community Articles or the Community Bylaws, the provisions of the Community Association Rules shall be deemed to be superseded by the provisions of this Declaration, the Community Articles or the Community Bylaws to the extent of any such inconsistency.

4.3.5. Insurance and Fidelity Bonds. The Community Association shall contract for and maintain insurance and fidelity bonds in accordance with the requirements set forth herein.

4.3.6. Liens and Charges. The Community Association shall pay any amount necessary to discharge any lien or encumbrance upon any property or interest of the Community Association. Where one or more Owners are jointly responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it, and any costs incurred by the Community Association by reason of said lien or liens shall be specially assessed to said Owner(s).

4.3.7. Reserves. The Community Association shall establish and maintain a working capital and contingency fund pursuant to this Declaration entitled "Community Association Funds".

4.4 Limitations. The Community Board shall be prohibited from taking any of the actions set forth below, except with the vote or written consent of a majority of Gleneagles Voting Power, excluding the voting power held or controlled by the Declarant and the Builder.

4.4.1. Contracts. The Community Board shall not enter into a contract with an entity other than Declarant wherein the contracting person or entity will furnish goods or services for the Community Association for a term longer than one (1) year with the following exceptions:

(a) a management contract, the terms of which comply with requirements of the Federal Housing Administration or Veterans Administration; or

(b) prepaid casualty and/or liability insurance policies not to exceed three (3) years duration provided that the policies permit short rate cancellation by the insured.

4.4.2. Sale of Property. The Community Association shall not sell, during any fiscal year, property of the Community Association having an aggregate fair market value greater than twenty-five percent (25%) of the budgeted gross expenses of the Community Association for that fiscal year, unless the prior approval of seventy-five percent (75%) of Gleneagles Voting Power has been obtained.

4.4.3. Compensation The Community Association shall not pay compensation to Community Directors or officers of the Community Association for services performed in the conduct of the Community Association's business; provided, however, that the Community Board may cause a Community Director or officer or a member of the Architectural Committee to be reimbursed for expenses incurred in carrying on the business of the Community Association and may compensate Directors or officers not in the employ of Declarant or a Builder with the prior approval of seventy-five percent (75%) of Gleneagles Voting Power.

## **ARTICLE V FUNDS AND ASSESSMENTS**

5.1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned by it hereby covenants and agrees to pay, and each Owner, by acceptance of a deed or other conveyance creating in such Owner the interest required to be deemed an Owner, whether it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Community Association all Community Assessments. Such Community Assessments shall be fixed, established and collected from time to time as hereinafter provided. Such Community Assessments, together with interest, late charges and costs and reasonable attorneys' fees, shall be the debt of and personal obligation of the Owner of such Lot at the time when the Community Assessment fell due. Each such Community Assessment, together with interest thereon, late charges, attorneys' fees and court costs, and other costs of collection thereof, as hereinafter provided, shall also, upon recordation of a Notice of Delinquent Assessment in accordance with the provisions hereof shall be a lien upon the Lot against which each such Community Assessment is made.

5.2 Community Association Funds. The Community Association shall establish and maintain a Maintenance and Operation Fund into which the Community Board shall deposit Regular Assessments. The Community Association shall also establish and maintain such other funds

(including a Reserve Fund) as the Community Board deems appropriate for deposit and disbursement of other assessments as the Community Board may from time to time establish. All of said funds are generally referred to herein as Gleneagles Funds. The Community Board shall establish and collect all Community Assessments and, where necessary, enforce the liens therefor as provided for in this Article.

5.3 Purpose of Community Assessments. The Community Assessments shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the Members and Owners of Gleneagles, and enhancing the quality of life in Gleneagles and the value of the Property.

5.4 Nature of Community Assessments. The Community Board shall establish the following Community Assessments, each of which shall be used only for the purposes specified in this Article:

5.4.1. Regular Assessments. A Regular Assessment shall be an annual assessment for Common Expenses fixed and levied by the Community Board based upon the estimated costs of operation of the Community Association in accordance with the budgets prepared pursuant to the provisions of this Article entitled "Community Association Accounts" and the accomplishment of its purposes, performance of its duties and the exercise of its power that benefit the entire Gleneagles. The amount and time of payment of Regular Assessments shall be determined as provided for below. Until January 1<sup>st</sup> of the year immediately following the conveyance of the first Lot to an Owner, the annual Regular Assessment shall be Twenty Five Dollars (\$25.00) for each Lot, except for any Commercial Lot for which the maximum Regular Assessment shall be established at the time of Annexation in a Supplementary Declaration. Increases in Regular Assessments shall be subject to the limitations set forth in Section 6.5 below. Notwithstanding the foregoing, no type of Assessment shall be levied against any Lot used for model home purposes only. The initial Budget based on initial estimates of the income and expenses of the Community Association for the Single Family Lots (both detached residences and townhomes) is attached as Exhibit "C." There will also be a separate budget for the Neighborhood Association containing townhome Lots.

5.4.2. Special Assessments. Special Assessments may be levied at any time during any fiscal year if the Regular Assessments prove inadequate for any reason, including nonpayment of any Owner's share thereof. Special Assessments shall be allocated in the same manner as Regular Assessments. Increases in Special Assessments shall be subject to the limitations set forth in Section 5.5 below.

5.4.3. Enforcement Assessments. The Community Association may levy an Enforcement Assessment against any Owner for bringing an Owner of his Lot into compliance with the provisions of this Declaration, the Community Articles, Community Bylaws, the Community Association Rules or any other charge designated an Enforcement Assessment in this Declaration, the Community Articles, Community Bylaws or Community Association Rules, together with attorneys' fees, interest and other charges related thereto as provided in this Declaration. If the Community Association undertakes to provide materials or services which benefit individual Owners, then such Owners in accepting such materials or services agree that the costs thereof shall be an Enforcement Assessment. The Community Board shall have the authority to adopt a reasonable schedule of Enforcement Assessments for any violation of the Master Management Documents. If, after notice and a hearing as required hereof, the Owner fails to cure or continues such violation,

the Community Association may impose an additional fine each time the violation is repeated, and may assess such Owner and enforce the Enforcement Assessment as herein provided for nonpayment of a Community Assessment. A hearing committee may be established by the Community Board to administer the foregoing.

**5.5 Limitation on Assessments.** From and after January 1<sup>st</sup> of the year immediately following the conveyance of the first residential Lot to an Owner, other than Declarant, a Builder, Apartment Owner, or Commercial Property Owner, Regular Assessments may not, except in the case of an Emergency (as hereinafter defined), be increased more than twenty-five percent (25%) of the Regular Assessment for the immediately preceding fiscal year, and Special Assessments may not, except in the case of an Emergency, be increased more than ten percent (10%) of the budgeted gross expenses of the Community Association for such fiscal year without, in each case, the consent of fifty-one percent (51%) of the Owners of Lots comprising the Class A and Class B Membership, in each case constituting a quorum and casting the votes at a meeting or election of the Community Association conducted in accordance with the provisions of any successor statute. For the purpose of this Section, a quorum shall mean more than fifty percent (50%) of the Owners of the Community Association and an Emergency shall mean any one of the following:

5.5.1. an extraordinary expense required by an order of a court;

5.5.2. an extraordinary expense necessary to repair or maintain Gleneagles or any part of it which is the responsibility of the Community Association to maintain where a threat to personal safety on the Property is discovered; or

5.5.3. an extraordinary expense necessary to repair or maintain Gleneagles or any part of it for which the Community Association is responsible that could not have been reasonably foreseen by the Community Board in preparing and distributing the Budget required hereunder; provided, however, that prior to the imposition or collection of a Regular Assessment under this Subsection, the Community Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense which is involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the Members entitled to vote thereon with the notice of Regular Assessment. For the purpose of calculating where an increase to Regular Assessments exceeds twenty percent (20%), the term "Regular Assessments" shall be deemed to include the amount assessed against each Lot by the Community Association as a Regular Assessment plus any amount paid by the Declarant as a subsidy pursuant to any subsidy agreements, to the extent such subsidy payments offset any amount which would otherwise be paid by Owners as Regular Assessments.

**5.6. Allocation of Community Assessments to Lots.** The Community Assessments shall be allocated to each Lot for which assessments have commenced as set forth below.

5.6.1. **Allocation of Community Assessments.** Community Assessments shall be allocated in a uniform manner among the Lots within Gleneagles based on the formulas for voting purposes set forth herein; provided, however, that any obligations of Declarant to pay Community Assessments shall be determined in accordance with the provisions of Section 6.6.2. below:

5.6.2. **Duty to fund deficits.** During any fiscal year in which Declarant or Builder own one or more Lots which, under this Section 5.6.2. are Exempt Property, Declarant or Builder shall be obligated to fund to or for the account of the Community Association, at such time or times,

as such funding is reasonably required by the Community Association during such fiscal year, an aggregate amount for such fiscal year equaling the total of the following:

(a) The lesser of: (i) the total amount which the Declarant would have owed to the Community Association on account of any Community Assessments which, if such Exempt Property had not been exempt, would have been levied against them for such fiscal year, or (ii) any excess, for such fiscal year, of the expenses (as described in Section 2.13.) over the aggregate Community Assessments levied against all non-exempt property in Gleneagles; plus

(b) for each respective Neighborhood containing any such Exempt Property, the lesser of: (i) the total amount which the Declarant would have owed to the Community Association on account of any Neighborhood which, if such Exempt Property had been non-exempt property, would have been levied against it for such fiscal year, or (ii) any excess, for such fiscal year, of such Neighborhood's expenses over the aggregate Neighborhood Assessments levied against all non-exempt property therein;

**provided, however,** that in no event shall Declarant have any obligation whatsoever to pay an amount in excess of twenty-five percent (25%) of the regular Community Assessments or other charge made or levied against any other Lot in Gleneagles if it was not an Exempt Property.

(c) Declarant shall be entitled to meet the deficit funding obligation by making, or (if such person so agrees in writing) causing any other person to make on its behalf, one or more cash payments or in-kind contributions of goods or services, or any combination thereof, and the Community Association shall have the right to enter into written or oral contracts with the Declarant for the contribution of such goods or services for such purpose.

(d) For purposes of this Section 6.6.2, "Exempt Property" means:

(i) All Neighborhood Common Area;

(ii) All common elements of a Condominium;

(iii) All parts of Gleneagles then owned by the County, the State of Utah, or another governmental or quasi-governmental entity having jurisdiction over any of Gleneagles, or any such entity, utility company, gas, fuel oil or other energy distributor, telecommunication company or other person or party which provides a utility service, or to the extent of any easement or other interest therein held by such authority;

(iv) All public roads or other parts of Gleneagles which, at the time in question, are exempt by law from taxation; and

(v) All real property not part of Gleneagles.

5.6.3. Other Community Assessments. Special Assessments shall be allocated in the same manner as Regular Assessments. Assessments, which shall be levied equally against Single Family Lots and Condominiums. Enforcement Assessments shall be levied directly to the individual Lots in a manner consistent with provisions of this Declaration.

5.7. Levy of Community Assessments. Community Assessments shall be levied and shall



5.8. Collection of Assessments. In the case of a Neighborhood Association, each Neighborhood Association shall have responsibility for collecting Community Assessments on behalf of the Community Association. Such Community Assessments shall be due and payable to the Neighborhood Association on the same day that such assessments would be due and payable to the Community Association. A Neighborhood Association shall levy late charges and upon instructions from the Community Board, interest charges against any Owner who fails to pay such Community Assessments within the time periods specified in the Section of this Article entitled "Late Charges". Within three (3) business days of payment of the Community Assessments to the Neighborhood Association, the Neighborhood Association shall deliver such Community Assessments to the Community Association. The Community Board shall establish procedures for the payment by the Neighborhood Association to the Community Association of Community Assessments collected by the Neighborhood Association. Any Community Assessments collected by the Neighborhood Association shall be held in trust for the benefit of the Community Association.

Any assessments against Lots which are not within a Neighborhood Association, including, but not limited to, Apartment Property and Commercial Property, shall be collected by the Community Association or its designee in accordance with the provisions of any guidelines established by the Community Board. If the Neighborhood Association or any Owner of any Apartment Property, Commercial Property or other Lot not within a Neighborhood Association fails to pay Community Assessments to the Community Board when due, and in accordance with the provisions of any guidelines established by the Community Board, the Community Board may bring an action against the Neighborhood Association or the Apartment Property, Commercial Property, or such Lot not within a Neighborhood Association including, but not limited to, an action pursuant to the Utah Contract Lien Law and all costs of enforcement shall be levied as an Enforcement Assessment against the Neighborhood Association. The Community Board may, upon a vote by a majority of the Community Directors, elect to terminate the obligation of any Neighborhood Association to collect the Community Assessments.

5.9. No Offsets. All Community Assessments shall be payable in the amount specified by the particular Community Assessment, and no offset against such amount shall be permitted for any reason, including, without limitation, a claim that the Declarant or the Community Association is not properly exercising its duties or powers as provided for in the Declaration or that an Owner is not satisfied with the scope or quality of any services or amenities.

5.10. Community Assessment Rolls. The Community Association may maintain and revise annually, an assessment roll for the subdivision within Gleneagles, reflecting the name and address of each Owner, and other data necessary to levy the Community Assessments. If a Neighborhood Association has been established for a subdivision, each Neighborhood Board shall supply the Community Association with the Neighborhood Assessment rolls and all amendments or revisions thereto on a regular basis or, upon request therefor, from the Community Association.

5.11. Transfer of Property. After transfer or sale of a Lot in Gleneagles, the selling Owner or Owners shall not be liable for any Community Assessment levied on the Lot after the date of such transfer of ownership. The selling Owner shall remain personally responsible for all Community Assessments and charges levied on the Lot prior to any such transfer unless the personal obligation is expressly assumed by the transferee, and such assumption is accepted in writing by the Community Association.

5.8. Collection of Assessments. In the case of a Neighborhood Association, each Neighborhood Association shall have responsibility for collecting Community Assessments on behalf of the Community Association. Such Community Assessments shall be due and payable to the Neighborhood Association on the same day that such assessments would be due and payable to the Community Association. A Neighborhood Association shall levy late charges and upon instructions from the Community Board, interest charges against any Owner who fails to pay such Community Assessments within the time periods specified in the Section of this Article entitled "Late Charges". Within three (3) business days of payment of the Community Assessments to the Neighborhood Association, the Neighborhood Association shall deliver such Community Assessments to the Community Association. The Community Board shall establish procedures for the payment by the Neighborhood Association to the Community Association of Community Assessments collected by the Neighborhood Association. Any Community Assessments collected by the Neighborhood Association shall be held in trust for the benefit of the Community Association.

Any assessments against Lots which are not within a Neighborhood Association, including, but not limited to, Apartment Property and Commercial Property, shall be collected by the Community Association or its designee in accordance with the provisions of any guidelines established by the Community Board. If the Neighborhood Association or any Owner of any Apartment Property, Commercial Property or other Lot not within a Neighborhood Association fails to pay Community Assessments to the Community Board when due, and in accordance with the provisions of any guidelines established by the Community Board, the Community Board may bring an action against the Neighborhood Association or the Apartment Property, Commercial Property, or such Lot not within a Neighborhood Association including, but not limited to, an action pursuant to the Utah Contract Lien Law and all costs of enforcement shall be levied as an Enforcement Assessment against the Neighborhood Association. The Community Board may, upon a vote by a majority of the Community Directors, elect to terminate the obligation of any Neighborhood Association to collect the Community Assessments.

5.9. No Offsets. All Community Assessments shall be payable in the amount specified by the particular Community Assessment, and no offset against such amount shall be permitted for any reason, including, without limitation, a claim that the Declarant or the Community Association is not properly exercising its duties or powers as provided for in the Declaration or that an Owner is not satisfied with the scope or quality of any services or amenities.

5.10. Community Assessment Rolls. The Community Association may maintain and revise annually, an assessment roll for the subdivision within Gleneagles, reflecting the name and address of each Owner, and other data necessary to levy the Community Assessments. If a Neighborhood Association has been established for a subdivision, each Neighborhood Board shall supply the Community Association with the Neighborhood Assessment rolls and all amendments or revisions thereto on a regular basis or, upon request therefor, from the Community Association.

5.11. Transfer of Property. After transfer or sale of a Lot in Gleneagles, the selling Owner or Owners shall not be liable for any Community Assessment levied on the Lot after the date of such transfer of ownership. The selling Owner shall remain personally responsible for all Community Assessments and charges levied on the Lot prior to any such transfer unless the personal obligation is expressly assumed by the transferee, and such assumption is accepted in writing by the Community Association.

5.12. Effect of Non-Payment of Assessments - Remedies of Community Association.

5.12.1. Late Charges. Community Assessments which are not paid when due shall be delinquent on said due date ("Delinquency Date"). If any such Community Assessment is not paid within thirty (30) days after the Delinquency Date or such earlier date as may be established by the Community Board upon prior notice to the Members, a late charge, interest charge and reasonable costs of collection, including attorneys' fees, shall be levied by the Community Board, in an amount equal to the greater of (a) eighteen percent (18%) of the amount of the delinquent assessment or (b) Ten Dollars (\$10.00) provided, however, that upon any amendments to Utah law or statute regulating the amount of the late charge, the late charge shall be adjusted to comply with the provisions of any such statute or law. In the event of a default or defaults in payment of any Community Assessment and in addition to any other remedies provided herein or by law, the Community Association may enforce each such obligation set forth below.

5.12.2. Action Against Owner. The Community Association may bring a suit or suits at law to enforce such Community Assessment obligation. Any judgment rendered in any such action shall include a sum for reasonable attorneys' fees in such amount that the Court may adjudge against such defaulting Owner. Upon full satisfaction of any such judgment, it shall be the duty of the Community Association by any authorized officer thereof to execute and deliver to the judgment debtor an appropriate satisfaction thereof.

5.12.3. Foreclosure of Lien. Within thirty (30) days after the delinquency of any Community Assessment, the Community Association shall give notice to the defaulting Owner, which notice shall state the date of the delinquency, the amount of the delinquency, and the interest and late fees charged for such delinquency, and make a demand for payment thereof. If such delinquency, late fees and interest are not paid within ten (10) days after delivery of such notice, of the Community Association may proceed to collect the same under the Utah Contract Lien Act.

5.12.4. Cure of Default. Upon the timely curing of any default for which a Notice of Lien was recorded by the Community Association, officers of the Community Association, officers of the Community Association or a managing agent appointed by the Community Board are hereby authorized to file or record, as the case may be, an appropriate release of such notice, upon payment by the defaulting Owner of a reasonable fee, to be determined by the Community Association, to cover the cost of preparing and filing or recording such release together with a payment of such other costs, interest or fees as shall have been incurred.

5.12.5. Non-Exclusive Remedy. The Community Assessment liens and the rights to foreclosure and sale thereunder shall be in addition to and not in substitution of all other rights and remedies which the Community Association and its assigns may have hereunder and by law, including a suit to recover a monetary judgment for unpaid Community Assessment as above provided.

5.12.6. Delegation of Authority. Each Owner, with the exception of the Administrator of Veteran Affairs, an Officer of the United States, hereby vests in and irrevocably delegates to the Community Board or its duly authorized representatives the right and power to bring all actions at law or equity, and lien foreclosures, whether judicially or by power of sale, or otherwise, against any Member for the collection of delinquent Community Assessments in accordance herewith, and hereby expressly waives any objection to the enforcement in accordance with this Declaration of the obligation to pay Community Assessments as set forth in this Declaration.

5.13. Neighborhood Assessment. With consent of any Neighborhood Association, which shall not be unreasonably withheld, the Community Association is empowered to, but shall not have the duty, to collect, enforce and otherwise administer the Neighborhood Assessments of any and all Neighborhoods established within Gleneagles such that Community Assessments and Neighborhood Assessments may be collected contemporaneously. The Community Board shall disburse funds collected on behalf of any such Neighborhood Association as promptly as possible. The Community Board may not charge for any such collection other than any actual additional costs for such collection that are charged to the Community Association. If any Neighborhood Association fails to levy or collect Neighborhood Assessments or fails to duly operate and maintain the Neighborhood to the standards established for Gleneagles, the Community Association may elect to preempt the rights of the Neighborhood Association without the consent of the Neighborhood Association and may fix, levy, collect and enforce said Neighborhood Assessments and arrange for such operation and maintenance provided that fifteen (15) days prior written notice of such election is given to the Neighborhood Association. Such preemption regarding Neighborhood Assessments and maintenance shall require a vote of two-thirds (2/3) of the Community Board. Any Neighborhood Assessments collected under such preemption by the Community Association shall be used solely for the purposes stated in the Neighborhood Declaration for the Neighborhood from which the Neighborhood Assessments were collected. The Community Board may retain the funds collected pursuant to this provision and directly disburse such funds to assure that it is being properly operated and maintained. A Neighborhood Association may not levy or collect any Neighborhood Assessments during the period in which the Community Association has preempted its rights to so levy or collect Neighborhood Assessments. The Preemption shall expire at the end of the fiscal year of the Neighborhood in which the preemption occurred. The Community Association may include in any such preempted Neighborhood's Assessment a reasonable amount for reimbursement of direct costs of administration and collection of such preempted Neighborhood Assessment.

5.14. Subordination of the Lien to Mortgages. The lien of the Community Assessments and Neighborhood Assessments provided for herein shall be subordinate to the lien of any First Mortgage recorded prior to the lien of the Community Association. The sale or transfer of any Lot shall not affect any Community Assessment lien or Neighborhood Assessment lien. The lien for unpaid Community Assessments shall be prior to any lien for an unpaid Neighborhood Assessment unless the Neighborhood Association elects to pay the Community Assessment lien and thereafter include any amounts paid by the Neighborhood Association to the Community Association in its Neighborhood Association lien. Nothing in this Section shall be construed to release any Owner from his personal obligation to pay for any Community Assessment or Neighborhood Assessment levied pursuant to this Declaration or any Neighborhood Restrictions, if applicable.

5.15. Community Association Accounts.

5.15.1. Operating Statements. The Community Board shall prepare or cause to be prepared and distribute to each Neighborhood Association, or if a subdivision does not have a Neighborhood Association, each Owner therein, copies of the budgets, balance sheets, operating statement and other information described below.

(a) Budget. The Community Board shall prepare a pro-forma operating statement ("Budget"), for each fiscal year, which Budget shall be distributed to each Owner not less than forty-five (45) days prior to the beginning of each fiscal year. The Budget shall contain the information regarding estimated revenue and expenses on an accrual or cash basis.

The Budget for the initial fiscal year shall be prorated for the balance of the year remaining. The Community Board shall assess the total operating expenses determined by the Budget to all assessable Owners as a Regular Assessment, allocated as specified in the Section of this Article entitled "Allocation of Community Assessments".

(b) Annual Report. An annual report shall be distributed within one hundred twenty (120) days after the close of each fiscal year which annual report shall consist of the following: (i) a balance sheet as of the end of the fiscal year; (ii) an operating (income) statement for the fiscal year, (iii) a statement of changes in financial position for the fiscal year and (iv) any information required to be reported under any successor statute or law. The annual report shall be prepared by an independent accountant for any fiscal year in which the gross income to the Community Association exceeds Fifty Thousand Dollars (\$50,000.00). If the report is not prepared by an independent accountant, it shall be accompanied by a certificate of an authorized officer of the Community Association that the statements were prepared without audit from the books and records of the Community Association.

(c) Operating Statement. A balance sheet prepared as of an accounting date ("Accounting Date") which shall be the last day of the month closest in time to six (6) months from the first sale of a Lot to an Owner other than Declarant or Builders, and an operating statement which has been prepared for the period from the date of the first sale of a Lot to an Owner other than Declarant or a Builder to the Accounting Date shall be distributed within sixty (60) days after said Accounting Date. Said operating statement for the first six (6) months accounting period shall include a schedule of assessments received or receivable, itemized by Lot number and by name of the person or entity assessed.

5.15.2. Review of Accounts. The Community Board shall, not less frequently than on an annual basis, perform the following:

(a) cause a current reconciliation of the Community Association's operating accounts and reserve accounts to be made and review the same;

(b) review the current year's actual reserve revenues and expenses compared to the current year's Budget;

(c) review the most current account statements prepared by the financial institution where the Community Association has its Maintenance and Operation Fund and Reserve Fund; and

(d) review an income and expense statement for the Community Association's Maintenance and Operation Fund and Reserve Fund.

5.15.3. Audit. Any Builder, Neighborhood Association or Mortgagee may, upon written request, at any reasonable time, and at the sole cost and expense paid in advance by the party requesting an audit or inspection, cause an audit or inspection to be made of the books and records of the Community Association, provided, however, that not more than a total of one (1) such audits may be performed in any fiscal year. The Community Board shall obtain such other audits as required by the Community Bylaws.

5.15.4. Notice to Mortgagees. Copies of each such balance sheet, operating statement and annual report for the Community Association shall be mailed to any Mortgagee who has requested in writing that such copies be sent to it.

5.16. Inspection of Association Books and Records.

5.16.1. Availability of Association Books and Records. Any membership register, including mailing addresses and telephone numbers, books of account and minutes of meetings of the Members, the Community Board and committees of the Community Board of the Association, shall be made available for inspection and copying by any Member of the Community Association, or the Member's duly appointed representative, or any Mortgagee, during normal business hours and for a purpose reasonable related to his or her interest as a Member, at the office of the Community Association or at such other place within Gleneagles as the Community Board prescribes.

5.16.2. Community Board Rules Regarding Inspection of Records.

(a) Three days written notice is to be given to the custodian of the records of the Community Association by the Member, representative or Mortgagee desiring to make an inspection.

(b) Monday through Friday, 9:00 AM to 4:00 PM are the days of the week and hours, respectively, week when an inspection may be made.

(c) Payment for the cost of reproducing copies of documents requested by a Member or by a representative or Mortgagee shall be made at time of notice, which shall include the cost of personnel to accomplish inspection and copying of the foregoing.

(d) These rules may be modified by resolution of the Community Board.

5.16.3. Director's Rights. Every director of the Community Association shall have the absolute right during normal business hours time to inspect all books, records and documents of the Community Association and the physical properties owned or controlled by the Community Association. The right of inspection by a director includes the right to make one (1) set of extracts and copies of documents.

**ARTICLE VI**  
**ARCHITECTURAL CONTROL**

6.1. Scope. Except as otherwise provided in this Declaration, there shall be no excavation, construction, building, landscaping, development or other Improvements situated within Gleneagles without compliance with this Article. The provisions of this Article shall preempt and supersede any inconsistent provision of any rules or restrictions of any Neighborhood Association to the extent that any Neighborhood Declaration or Neighborhood Rules and Regulations are in conflict with the provisions of this Declaration; provided, however, that the provisions of the Zoning Laws are incorporated herein by reference, and this Declaration shall be subject to the operation and effect of the Zoning Laws.

6.2. Exemptions. The following exemptions are hereby granted:

6.3. Declarant Exemption. Any building, Structure, Improvement, grading, fence, wall or landscaping erected or installed by the Declarant anywhere in Gleneagles or any personal property or fixture which is annexed thereto shall not be subject to the provisions of this Article VII.

6.3.1. Builder Exemption. A Builder shall be exempt from the provisions of this Article VII only if the Improvements or Structure proposed to constructed by said Builder have been approved in writing by Declarant.

6.3.2. Apartment Owner Exemptions. Apartment Property Owners shall be exempt from the provisions of this Article as to any Improvements which have been approved in writing by Declarant.

6.3.3. Commercial Property Owners Exemption. Commercial Property Owners shall be exempt from the provisions of this Article VII as to any specific Improvements or Structures or construction or building standards which have been approved in writing by Declarant or in a Supplementary Declaration.

6.4. Appointment of Architectural Committee. There shall be one (1) Architectural Committee for Gleneagles; provided however, the Neighborhood Association may have an architectural committee, as more fully provided in the Neighborhood Declaration. Upon the annexation of an Annexable Property within Gleneagles, the Annexed Property shall be subject to the provisions of this Article. The Architectural Committee shall consist of at least three (3) and no more than five (5) persons who shall initially be appointed by the Declarant. Members of an Architectural Committee appointed by the Declarant need not be Members of the Community Association. The Declarant shall retain the right to appoint, augment or replace members of an Architectural Committee until such time as the Owners other than Declarant, Builders and Apartment Owners are entitled to vote ninety percent (90%) or more of Gleneagles Voting Power, or January 1, 2020 whichever occurs first; provided that Declarant may, at its sole option, transfer this right to appoint the Architectural Committee to the Community Board by written notice thereof prior to the end of such period. Thereafter, the right to appoint, augment or replace members of an Architectural Committee shall automatically be transferred to the Community Board; provided, however, that so long as Declarant owns any of the real property described on Exhibit "B" then at least one member of the Architectural Committee may, at Declarant's election, be appointed by Declarant.

6.5. Resignations. Any member or alternate member of the Architectural Committee may at any time resign from the Architectural Committee upon written notice delivered to the Declarant or to the Community Board, whichever then has the right to appoint members.

6.6. Vacancies. Vacancies on an Architectural Committee, however caused, shall be filled by the Declarant or the Community Board, whichever then has the power to appoint members.

6.7. Duties. It shall be the duty of the Architectural Committee to consider and act upon such proposals or plans submitted to it pursuant to the terms hereof, to administer any Architectural Standards promulgated by the Community Board, to perform other duties delegated to it by the Community Association, to ensure that any Improvements constructed within Gleneagles conform to plans approved by the Architectural Committee, and to carry out all other duties imposed upon it by this Declaration. Three (3) sets of plans shall be submitted to the Architectural Committee with

a Twenty Five (\$25.00) Dollar fee (which fee may be changed from time to time by the Architectural Committee) for the review of the plans. Reviews will not be conducted without plans and fees paid. The Architectural Committee, in its own name or on behalf of the Community Association, may exercise all available legal and equitable remedies to prevent or remove any unauthorized and unapproved construction of Improvements within Gleneagles or any portion thereof. Notwithstanding the foregoing, the Architectural Committee may delegate its plan review responsibilities to one or more members of the Architectural Committee. Any such delegation must be made in writing and filed with the Community Board. Upon such delegation, the approval or disapproval of plans and specifications by such person shall be equivalent to approval or disapproval by the entire Architectural Committee. Unless any such rules regarding submission of plans are complied with, such plans and specifications shall be deemed not submitted.

6.8 Address. The address of the Architectural Committee shall be the principal office of the Community Association or any other place as may be designated by the Community Board pursuant to the Community Bylaws. Such address shall be the place for the submittal of plans and specifications and the place where the current Architectural Standards, if any, shall be kept.

6.9. Effect of Architectural Committee. The establishment of an Architectural Committee and the procedures herein for architectural approval shall not be construed as changing any rights or restrictions upon Owners to maintain, repair, alter, modify or otherwise have control over the Owners' respective Lot(s) and the Dwellings and other Improvements situated thereon, as may otherwise be specified in this Declaration, the Community Bylaws or any Community Association Rules.

6.10. Meetings. The Architectural Committee shall meet from time to time as necessary to properly perform its duties hereunder. Unless otherwise provided for herein, the vote or written consent of a majority of the members of an Architectural Committee shall constitute an act by such Architectural Committee unless the unanimous decision of its members is otherwise required by this Declaration. The members of the Architectural Committee shall be entitled to reimbursement for reasonable expenses incurred by them in the performance of any Architectural Committee function, but shall otherwise receive no compensation for services rendered unless agreed to by seventy-five percent (75%) or more of Gleneagles Voting Powers.

6.11. Approval and Conformity of Plans. The Community Board shall, from time to time, adopt and promulgate Architectural Standards to be administered through the Architectural Committee. The Architectural Standards shall include, among other things, those restrictions and limitations upon the Owners set forth below.

6.11.1. Limitation on Improvements. If the Architectural Standards so provide, no Improvements shall be commenced, erected or maintained upon the Property, nor shall there be any addition to or change in the exterior of any Dwelling, structure or other Improvement, unless plans and specifications therefor have been submitted to and approved by the appropriate Architectural Committee in accordance with the procedures set forth in this Declaration. Repainting of the exterior of Dwelling, the color of which has been previously approved by the Architectural Committee, shall not require another approval of the Architectural Committee.

6.11.2. Time Limitations. The Architectural Standards may set forth time limitations for the completion of any Improvements for which approval is required pursuant to the Architectural Standards.



6.11.3. Conformity of Plans and Specifications. The Architectural Standards may provide for the conformity of completed Improvements to plans and specifications approved by the Architectural Committee and to the Architectural Standards; provided, however, unless notice of noncompletion or noncompliance identifying the violating Lot and its Owner and specifying the reason for the notice executed by the appropriate Architectural Committee, shall be filed of record and given to such Owner within sixty (60) days after the expiration of the time limitations established pursuant to Subsection 7.11.2 above or unless legal proceedings shall have been instituted to enforce compliance or completion within said sixty (60) day period, the completed Improvements approved by the Architectural Committee shall be deemed to be in compliance with the Architectural Standards of the Community Association.

6.11.4. Other Limitations and Review Fees. The Architectural Standards may include such other limitations and restrictions as the Community Board in its reasonable discretion shall adopt including, without limitation, regulations of the following: construction, reconstruction, exterior addition, change or alteration to or the maintenance of any building, Structure, wall or fence, including, without limitation, the nature, kind, shape, height, materials, exterior color and surface and location of any Dwelling, Structure or other Improvements of any kind. The Architectural Committee may change a fee not to exceed One Hundred Dollars (\$100.00) for review of plans and specifications.

6.12. Time Period for Review of Plans and Specifications. If the Architectural Committee fails to approve or disapprove such plans and specifications within ninety (90) days after the same have been duly submitted in accordance with any rules regarding such submission adopted by such Architectural Committee, the Owner requesting said approval may submit a written notice to the Architectural Committee advising the Architectural Committee of its failure to act. If the Architectural Committee fails to approve or disapprove any such plans and specifications within thirty (30) days after the receipt of said notice from such Owner, said plans shall be deemed approved.

6.13. Appeal. If plans and specifications submitted to the Architectural Committee are disapproved thereby, the party or parties making such submission may appeal in writing to the Community Board. The written request must be received by the Community Board not more than ten (10) days following the final decision of the Architectural Committee. The Community Board shall submit such request to the appropriate Architectural Committee for review, whose written recommendations will be submitted to the Community Board. Within forty-five (45) days following receipt of the request for appeal, the Community Board shall render its written decision. The failure of the Community Board to render a decision within said forty-five (45) day period shall be deemed a decision in favor of the appellant.

6.14. Waiver. The approval by the Architectural Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Architectural Committee under this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

6.15. Estoppel Certificate. Within forty-five (45) days after written demand is delivered to the shall provide an Architectural Committee by any Owner, and upon payment to the Community Association a fee of Twenty Five Dollars (\$25.00) (which may be changed from time to time by the Architectural Committee), the Architectural Committee estoppel certificate, executed by any two (2) of its members, certifying (with respect to any Lot of said Owner) that as of the date thereof either; (a) all Improvements made and other work done upon or within said Lot comply with the provisions

of this Article VII, or (b) such Improvements or work do not so comply, in which event the certificate shall also identify the non-complying Improvements or work and set forth with particularity the basis of such noncompliance. Any purchaser from the Owner, or from anyone deriving any interest in said Lot through him, shall be entitled to rely on said certificate with respect to the matter therein set forth, such matters being conclusive as between the Community Association, Declarant and all Owners and such persons deriving any interest through them.

6.16. Liability. Neither the Architectural Committee nor any member thereof shall be liable to the Community Association or to any Owner for any damage, loss or prejudice suffered or claimed on account of: (a) the approval or disapproval or any plans, drawings and specifications, whether or not defective, (b) the construction or performance of any work, whether pursuant to approved plans, drawings, and specifications, (c) the development of any property within Gleneagles, or (d) the execution and filing of an estoppel certificate pursuant to Section 7.15 above, whether or not the facts therein are correct, provided that such member has acted in good faith on the basis of such information as may be possessed by him. Any plans and specifications submitted to the Architectural Committee are not approved by the Architectural Committee for architectural or engineering design, and by approving such plans and specifications neither the Architectural Committee, the members thereof, the Community Association, the Community Board nor the Declarant assumes liability thereof or for any defect in any Structure constructed from such plans and specifications. Without in any way limiting the generality of the foregoing, the Architectural Committee, or any member thereof, may, but is not required to consult with or hear the views of any member of the Community Association with respect to any plans, drawings, specifications or any other proposal submitted to the Architectural Committee.

6.17. Governmental Requirements. The application to and the review and approval by the Architectural Committee of any proposals, plans or other submittals shall in on way be deemed to be in satisfaction of or in compliance with any Zoning Laws, building permit process or any other governmental requirements, the responsibility for which shall be solely with the respective Owner.

## **ARTICLE VII USE RESTRICTIONS FOR GLENEAGLES**

7.1 Neighborhood Restrictions. Each Neighborhood within Gleneagles may have a Neighborhood Declaration, and if so, the Neighborhood Declaration shall specify the procedures for operation and management of the Neighborhood and establish the uses permitted and prohibited on or about the Lots established the uses permitted and prohibited on or about the Lots within the Neighborhood and the Neighborhood Common Area. There shall be no amendment of the provisions in any such Neighborhood Declaration except with written consent of the Community Board. The Community Association expressly be made a third (3<sup>rd</sup>) party beneficiary to each Neighborhood Declaration. The Community Association shall have the right to enforce any provisions of any Neighborhood Declaration, to the extent that the Community Association deems it necessary to protect the overall interest in Gleneagles. The Community Association shall not, however, in any event, be considered has having a duty or obligation to enforce any particular provisions of any particular Neighborhood Declaration.

7.2 Permitted Uses and Limitations. The following use restrictions shall apply in Gleneagles. Notwithstanding anything to the contrary set forth in this Section 8.2, the provisions of this Section 7.2 shall not apply to the Commercial Property.

7.2.1. Residential Use. All Lots, except Common Area Lots, Neighborhood Common Area Lots, and Commercial Property, shall be known and described as Residential Lots and shall be used for no purpose other than residential purposes except that the following uses shall be permitted as defined and restricted in the Zoning Laws: private residence for a home occupation. Subject to the provisions of the Section of this Article entitled "No Subdivision of Lots", no building shall be erected, altered, placed or permitted to remain on any Lot other than a building used as a Dwelling or used in conjunction with a Dwelling, including, but not limited to, any buildings adjacent to the Dwelling for use as a garage, and/or a cabana adjacent to the swimming pool, or an Apartment Building.

7.2.2. No Commercial Use. Except as permitted under this Declaration, no Residential Property shall be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending, or other such nonresidential purposes; provided, however, that a management, leasing and/or sales office may be maintained by each Owner of any Apartment Property.

7.2.3. Rental of Dwelling. An Owner shall be entitled to rent the Dwelling situated on the Owner's Lot, subject to the restrictions contained in this Declaration, including, but not limited to, Subsection 7.2.1. Any rental or leasing agreement shall be in writing, shall be made only to natural persons who actually reside in the Dwelling, shall provide that the lease or rental is subject to this Declaration, the Community Bylaws, Community Articles and the Community Association Rules and shall provide that any failure to comply with any provisions of this Declaration, the Community Bylaws, Community Articles or Community Association Rules shall be a default under the terms of the rental or lease agreement. No Owner may lease such Owner's Lot or Improvements thereon for hotel, motel or transient purposes. Any lease which is either for a period of fewer than thirty (30) days or pursuant to which the lessor provides any services normally associated with a hotel, shall be deemed to be for transient or hotel purposes. Any Owner who shall lease his or her Dwelling shall be responsible for assuring compliance by such Owner's lessee with this Declaration, the Community Articles, Community Bylaws and the Community Association Rules; provided, however, the obligation of the foregoing sentence shall not apply to the Declarant.

7.2.4. Signs. No sign or billboard of any kind shall be displayed to the public new on any Lot or Neighborhood Common Area with the following exceptions:

- (a) signs as may be required by legal proceedings, or the prohibition of which is precluded by law;
- (b) signs as may be used by Declarant or its sales agents in connection with the development of Gleneagles and the sale and marketing of the Lots;
- (c) identification and directional signs placed by Neighborhood Owner or Neighborhood Association on the Neighborhood, subject to approval of the Architectural Committee.
- (d) any business located in Gleneagles can have a reasonable and customary sign subject to architectural review.

Declarant's rights to so establish signs shall be exercised for a reasonable period of time in conjunction with Declarant's and the Builder's development of the property, and shall be subject to the approval of the Community Board beginning on January 1, 2015. Notwithstanding the

foregoing, in accordance with the provisions of law, an Owner may display on his Lot not more than one "for sale" or "for lease" sign per Lot so long as such sign shall comply with any reasonable standards promulgated by the Community Board or Architectural Committee as to the size, color, shape or other qualifications for permitted signs. This sign shall not be larger than two feet by two feet (2' x 2').

7.2.5. Nuisance; Hazards and Waste. No noxious or unreasonably offensive trades or activities shall be carried on upon any Lot or Neighborhood Common Area or be done thereon which may be, or may become a nuisance, disturbance or unreasonable embarrassment to Gleneagles, or which shall unreasonably interfere with the use of each of the Owners of his Dwelling, or which shall, in anyway, increase the rate of insurance, or which constitutes a violation of any law, ordinance or regulation, now or hereafter in effect, imposed by any governmental entity having jurisdiction over the Property. No hazardous, toxic or contaminated material which are regulated by any federal, state or local agency shall be stored, place or used on the Property. Within ten (10) days of receipt of written notice from the Community Association specifying any item which creates such an insurance hazard or constitutes such waste, the Owner shall cause such item to be removed at such Owner's sole cost and expense. If such item is not timely removed, the Community Association may enter upon such Lot or Neighborhood Common Area, remove or cause to be removed such item and assess the Owner or Neighborhood Association the amount of all costs and expense therefore as an Enforcement Assessment.

7.2.6. Temporary Structures. No trailer, mobile home, tent, shack or other outbuildings shall be kept upon any Residential Property Lot or Neighborhood Common Area or in any street within Gleneagles, except in connection with work, sales and marketing or Lots or Gleneagles or construction diligently pursued.

7.2.7. Vehicles.

(a) As used herein,

(i) "Vehicle" means a Commercial Vehicle, Motor Vehicle, Recreational Vehicle, automobile, Large Truck, other truck or van (in each case, as defined by the Utah Motor Vehicle Administration or by common usage and practice), trailer, motorcycle, bicycle, mo-ped, or other powered or unpowered vehicle.

(ii) "Commercial Vehicle" means any (1) automobile, truck or van with a gross vehicle weight exceeding one-ton and used or designed principally for commercial, business or industrial use, or (2) taxicab.

(iii) "Inoperable Vehicle" means any Commercial, Recreational or other Vehicle which is a junk Vehicle, or is inoperable, or lacks current, valid registration plates, or would not pass applicable state vehicular inspection criteria, or is not being maintained in a first-class condition.

(iv) "Large Truck" means any truck or van (in each case, as defined by the Utah Motor Vehicle Administration or by common usage and practice), or self-propelled farm or construction vehicle, which is more than 24 feet long, or has a capacity exceeding one ton.

(v) "Motor Vehicle" means a vehicle required by law to be registered with the Utah Motor Vehicle Administration or another governmental authority or entity, or propelled by a

motor.

(vi) "Recreational Vehicle" means any (1) boat, boat trailer, camp truck, camp trailer, golf cart, house trailer, personal watercraft, snowmobile, recreational bus or similar vehicle, motor home, camper van or all-terrain vehicle, or dirt bike, or (2) other powered or unpowered vehicle designed primarily for use for sports or recreational purposes.

(b) No Vehicle shall be parked or stored in Gleneagles other than in accordance with the provisions hereof. In addition, no Recreational Vehicle shall be permitted to be stored in a location visible from a public street on any Lot in Gleneagles; provided, however, that Recreational Vehicles may be allowed to be visible on driveways of Single Family Lots for loading and unloading purposes only and further, provided, such visibility is limited to a period of time which is necessary for loading and unloading.

(c) Unless permitted by any other provision of this Declaration, no Inoperable Vehicle shall be parked or stored anywhere in Gleneagles.

(d) No Commercial Vehicles shall be left parked on any part of the Property, including, without limitation, any street or Lot, longer than is necessary to perform the business function of such vehicle in the area; it being the express intention of this restriction to prevent the parking of Commercial Vehicles upon the Property, including, without limitation, the streets or Lots in the Community, for a time greater than that which is necessary to accomplish the aforesaid business purpose. Anything to the contrary notwithstanding herein, nothing herein shall prohibit the parking of Commercial Vehicles on a parking area or driveway on any Lot while providing maintenance, repair or installation services on, or making a delivery to or from, such Lot.

(e) No automobile or other Vehicle shall be constructed, restored or repaired on a Lot at a location visible from outside a garage or other building thereon, other than minor repairs such as oil, filter, battery, belt, wiper, light and tire changes, or emergency repairs which cannot reasonably be performed elsewhere, in each case if performed (1) on a Vehicle owned by an Owner of, and customarily kept on, such Lot, (2) using all appropriate environmental safeguards, and (3) in a continuous and timely manner.

(f) No person shall operate a Vehicle in Gleneagles other than in a safe and quiet manner and with due consideration for the rights of all Owners and occupants, or without holding a valid driver's license.

(g) Nothing in this Declaration shall prohibit or restrict the Declarant or Builder during the Development Period from operating, parking, maintaining or otherwise using a Vehicle anywhere in Gleneagles.

7.2.8. Animals. No animals, livestock, or poultry of any kind, including pigeons, shall be raised, bred or kept on any Lot, except that dogs, cats or any household pets, may be kept on Lots, provided that they are not kept, bred or maintained for any commercial purpose, and provided that they are kept so as to avoid becoming a nuisance to the neighborhood or to any adjoining property owners, and do not roam unattended on the Property. Household pets shall not include miniature pigs, horses or other hybrid livestock or farm animals. Notwithstanding the foregoing, no animals may be kept on any Lot which, in the good faith judgment of the Community Board, or a committee selected by the Community Board for this purpose, result in an unreasonable annoyance or are obnoxious to residents in Gleneagles. The Owner of any animal shall not permit such animal

to run unrestrained on the streets, sidewalks or pathway areas of Gleneagles and the Owner of such animal shall maintain full and complete control over such animal. Pets shall be registered, licensed and inoculated as required by law. Owners shall be responsible for the immediate clean-up and removal of their pets' waste from any area of Gleneagles. The Community Board shall have the right, after notice and hearing, to remove animals from the Property which it finds constitutes a continuing unreasonable nuisance to Owners or which is otherwise not in compliance with the subsection.

7.2.9. Unightly Items. All weeds, rubbish, debris, or unsightly materials or objects of any kind shall be regularly removed from the Lots and shall not be allowed to accumulate thereon. All refuse containers, woodpiles, storage areas, machinery and equipment shall be prohibited upon any Lot unless obscured from view of adjoining streets, Lots or alleys nearest such portion of the Lot from a height of six (6) feet or less and shall comply with any restrictions or standards promulgated by the Community Board or the Architectural Committee.

7.2.10. Neat Appearance. Owners shall, at all times, maintain their Lots and all appurtenances thereto in good repair and in a state of neat appearance, including but not limited to, the seeding, watering and mowing of all lawns and yards located in the rear portion of such Lot if such rear portion is fenced in by such Owner, keeping all sidewalks, if any, neat, clean and in good repair, and free of ice and snow, the pruning and cutting of all trees and shrubbery and the painting (or other appropriate external care) of all Structures on the Lots, all in a manner and with such frequency as is consistent with good property management and maintenance. If, in the opinion of the Architectural Committee, any Owner fails to perform the duties imposed hereunder, the Community Association, on affirmative action of a majority of the Community Board, after fifteen (15) days written notice to such Owner to remedy the condition in question, and upon failure of the Owner to remedy the condition, shall have the right (but not the obligation), through its agents and employees, to enter upon the Lot in question and to repair, maintain, repaint and restore the Lot and the Improvements or Structures thereon, and the cost thereof shall be a binding, personal obligation of such Owner, as an additional assessment on the Lot.

7.2.11. Antennae. No radio aerial, antenna or satellite or other signal receiving dish, or other aerial or antenna for reception or transmission, shall be placed or kept on a Lot outside of a Lot, except on the following terms:

(a) An Owner may install, maintain and use on its Lot one (or, if approved, more than one) Small Antenna (as hereinafter defined) in the rear yard of a Lot, at such location, and screened from view from adjacent Dwellings in such a manner and using such trees, landscaping or other screening material, as are approved by the Architectural Committee, in accordance with this Declaration. Notwithstanding the foregoing terms of this subsection, (i) if the requirement that a Small Antenna installed on a Lot be placed in the rear yard of a Lot would impair such Small Antenna's installation, maintenance or use, then it may be installed, maintained and used at another approved location on such Lot where such installation, maintenance or use would not be impaired; (ii) if and to the extent that the requirement that such Small Antenna be screened would result in any such impairment, such approval shall be on terms not requiring such screening; and (iii) if the prohibition against installing, maintaining and using more than one (1) Small Antenna on a Lot would result in any such impairment, then such Owner may install on such Lot additional Small Antenna as are needed to prevent such impairment (but such installation shall otherwise be made in accordance with this subsection).

(b) In determining whether to grant any approval pursuant to this Section, neither

Declarant nor the Architectural Committee shall withhold such approval, or grant it subject to any condition, if and to the extent that doing so would result in an impairment.

(c) As used herein, (i) "impair" has the meaning given it in 47 Code of Federal Regulations Part 1, section 1.4000, as hereafter amended; and (ii) "Small Antenna" means any antenna (and accompanying mast, if any) of a type, the impairment of the installation, maintenance or use of which is the subject of such regulation. Such antennae are currently defined thereunder as, generally, being one (1) meter or less in diameter or diagonal measurement and designed to receive certain types of broadcast or other distribution services or programming.

(d) Notwithstanding the foregoing provisions of this Section, it is the Declarant's intention that to the extent permitted by applicable law, any antennae as described herein shall be placed in the least visible areas in order to be non-visible from all other Owners and from sight of the road.

7.2.12. Drainage. All drainage of water from any Lot or Neighborhood Common Area and the Improvements thereon shall drain or flow set forth below.

(a) Any such water may drain or flow into adjacent streets or alleys and shall not be allowed to drain or flow upon, across, or under adjoining Lots unless an easement for such purpose is granted.

(b) All slopes or terraces on any Lot or Neighborhood Common Area shall be maintained so as to prevent any erosion thereof upon adjacent streets or adjoining property.

7.2.13. Garages. No garage doors shall be permitted to remain open except for a temporary purpose, and the Community Board may adopt rules for the regulation of the opening of garage doors, including the assessment of charges to Owners who violate such rules. Any charges so assessed shall be Enforcement Assessments.

7.2.14. No Obstructions. There shall be no obstruction of any Neighborhood Common Area except as permitted herein or as provided by the Community Association Rules. Nothing shall be placed or stored in the Neighborhood Common Area, except as allowed by the express permission of the Community Board.

7.2.15. Rubbish. No portion of the Property shall be used or maintained as a dumping ground for rubbish. No oil or other refuse shall be allowed to enter storm drains.

7.2.16. Compliance with Laws, Etc. No Owner shall permit anything to be done or kept in a Lot that violates any laws, ordinances, statutes, rules or regulations of any county, state or federal body.

7.2.17. Fires. There shall be no exterior fires on the Neighborhood Common Area or on Lots, except barbecue fires contained within the receptacles provided by the Neighborhood Association.

7.2.18. No Subdivision of Lots. No Lot shall be further subdivided nor shall less than all of any such Lot be conveyed by an Owner thereof. No easement or other interest in a Lot shall be given without the prior written approval of the Architectural Committee. The restriction set forth in this Subsection shall not apply to any Commercial Property or Apartment Property.

7.2.19 Fences and Walks. Except for fences as may be installed and/or constructed by Declarant or Builder simultaneously with the initial construction of a dwelling on a Lot by Declarant and/or Builder, no fence, wall or other similar enclosure may be built on the front or side yard of any Lot, except a rear yard fence. The rear yard fence for any Lot which abuts to the outside boundaries of the Property shall be no closer than five feet (5') from such boundary; and all other Lots may not have a fence which is nearer than four feet (4') from its rear property line. In the event the rear portion of a Lot is fenced in by an Owner, such Owner shall maintain such area in accordance with the provisions hereof. The height restriction of all enclosures of patios and open gardens, privacy screens and work area screens, shall not exceed six feet (6') in height; however, this restriction shall not apply to retaining walls required by topography, where such enclosures are approved in advance by the Architectural Committee and provided they do not extend beyond the minimum building lines to any Lot line and are located to the rear of the front face of the Structure. No fences, walls or hedges shall be erected or placed nearer to any street Lot line than the front of the building. Such enclosures may extend beyond the minimum building line to a Lot line, provided any such enclosure is fifty percent (50%) "see-through." All gates must open inward onto a Lot and shall not open onto another Lot or public land.. All fences and walls (except such fences and walls as may be installed and/or constructed by Declarant and/or Builder simultaneously with the initial construction of a Dwelling on a Lot by Declarant and/or Builder in accordance with plans and specifications approved by Declarant) must receive the prior written approval of the Architectural Committee. Any such fence or wall shall be decorative in character (rail, picket, etc.), and not of chain link or chicken wire. The foregoing restriction shall not be construed to prohibit the growth of an ornamental hedge fence, which shall be kept neatly trimmed, and shall be trimmed to a hedge of not more than three feet (3') in the front yard of any Lot and the side yard of corner Lots. No fences are permitted without necessary local government permits and approvals, if applicable. Any fencing installed by Declarant during the Development Period on an individual Lot shall be the responsibility of the Owner of said Lot to repair and maintain.

7.2.20 Clothes Lines. No exterior clothes dryer, clothes pole or similar equipment shall be erected, installed or maintained on any Lot, nor shall articles of clothing, bedding, etc. be hung outside.

7.3. Commercial Property Use Restrictions. Prior to the conveyance of Commercial Property, Declarant may in its sole discretion establish Supplemental Restrictions pertaining to the nature and requirements for the use of the Commercial Property which shall be compatible with the general plan of Declarant for Gleneagles. The Community Association shall not interfere with the rights of such Commercial Property Owners to duly carry out their commercial enterprises in accordance with such Supplemental Restrictions.

7.4 Easements. There are hereby established easements over, under and through each Lot and the Neighborhood Common Area, which easements are described herein.

## **ARTICLE VIII**

### **APARTMENT PROPERTY OWNERSHIP**

8.1. Applicability of Declaration. The Apartment Owners shall be considered Owners and the portion of the Apartment Property which each owns shall be considered a Lot with respect to the provisions of this Declaration.



8.2. Conversion to Condominium. An Apartment Owner, in its sole discretion, may elect to convert its portion of the Apartment Property to a condominium project or projects pursuant to Utah law upon recordation of a condominium declaration. Commencing as of the recordation of a condominium declaration and plat in the Land Records, the Owners of Condominiums in such converted apartment buildings shall all be "Owners" as defined in this Declaration and shall be assessed at the same rate and manner as other Owners, and the condominium association shall be a Member of the Community Association and shall have the same voting rights as other Neighborhood Associations and shall be subject to all of the provisions of this Declaration.

## **ARTICLE IX INSTALLATION, REPAIR AND MAINTENANCE**

9.1 Repair and Maintenance by Community Association. Without limiting the generality of the statement of duties and powers contained in this Declaration, and except for any districts created pursuant to the provisions of this Declaration, the Community Association shall accomplish the following upon the Lots, Neighborhood Common Area or other land within Gleneagles in such manner and at such times as the Community Board shall prescribe.

9.1.1. Maintenance Obligations. The Community Association shall maintain all other areas, facilities equipment, services or aesthetic components of whatsoever nature as may from time to time be requested by the vote or written consent of at least two-thirds (2/3) of Gleneagles Voting Power. The Community Association shall be responsible to maintain the park strips within the Tooele city right-of-way adjacent to 600 West and Rogers Street in the Community and one-half (1/2) of the costs for the entry monument(s) located in the public park serving the Community.

9.2. Maintenance Obligations of the Neighborhood Associations. For the purposes of this Declaration, a Neighborhood Association shall be deemed responsible for the maintenance of the Neighborhood. The member of a Neighborhood Association shall not amend any such declaration to terminate or modify the maintenance responsibilities of such Neighborhood Association without the prior written approval of the Community Board. If a Neighborhood Association does not perform its maintenance responsibilities in compliance with the Architectural Standards and in accordance with the requirements of this Declaration, the Community Association may perform such maintenance itself and levy on the members of such Neighborhood Association an assessment therefor and the vote of the Owners in such Neighborhood Association shall not be required.

(a) The Townhouse Neighborhood Association is responsible to maintain all of its common open space which shall include park strips adjacent to its property along 600 West as well as the costs of any entry monuments for the townhomes and one-half (1/2) of the entry monument(s) serving the Community.

(b) The Apartment Neighborhood Association shall be responsible to maintain all of its common open space which shall include park strips adjacent to its property along 600 West.

9.3. Maintenance Obligations of Commercial Property Owners and/or Commercial Property Owners Association. The Commercial Property Owners and/or the Commercial Property Owners Association shall maintain all portions of the Commercial Property in a first-class condition

of maintenance and repair consistent with the maintenance and care for the balance of Gleneagles. The Community Association shall maintain, repair, restore, replace and make necessary Improvements to those portions of the Commercial Property that the Commercial Property Owners and/or the Commercial Property Owners Associations fail to maintain. The affected Commercial Property Owners and/or Commercial Property Owners Associations shall reimburse the Community Association for all the costs, if any, that the Community Association incurs in performing its duties hereunder within ten (10) days after receipt of a written request therefor. If any such amount is not paid to the Community Association when due, the Community Association may levy on Enforcement Assessment against the Commercial Property Owners and/or Commercial Property Owners Association in question. The Commercial Property Owners and/or their Commercial Property Owners Association, as applicable, shall maintain, manage, operate, control, repair, restore and replace all of the common area portions, including park strips along 600 West within the Community, of the Commercial Property in a condition that (a) is at least, in the Community Board's reasonable judgment, substantially equal to or better than the condition that the Neighborhood Common Area (if applicable) is to be maintained by the Community Association as provided herein and (b) satisfies all County requirements.

9.4 Repair and Maintenance by Owner. Except for the obligations of the Community Association to repair and maintain as may be provided in this Declaration, and except for the maintenance obligations of the Neighborhood Associations with respect to Lots and Neighborhood Common Area within the Neighborhood, every Owner shall do as set forth below.

9.4.1. Exterior of Dwelling. Each Owner shall maintain the exterior of the Owner's Dwelling, Apartment Building, (and any sidewalk in the Tooele County right-of-way located on such Owner's Lot) and/or Commercial Property in first-class condition of maintenance and repair as reasonably determined by the Board and in accordance with all requirements of Tooele County.

9.5. Standards for Maintenance and Repair.

9.5.1. Landscaping. Except to the extent that Neighborhood Restrictions require such maintenance to be accomplished by the Neighborhood Association and unless the Builder installs landscaping on a particular Lot, all portions of a Lot which are improved with a Dwelling or Structure, except for Lots owned by Declarant or a Builder, shall be landscaped by the Owner thereof within one hundred twenty (120) days from the original conveyance of such Lot by Declarant in accordance with the Community Association Rules promulgated by the Community Board. Prior to the rental of any space in buildings situated on any Commercial Property, all land shall be landscaped and maintained in a manner harmonious and consistent with a first-class development. Thereafter, such landscaping shall be maintained by the Owner in a clean, safe and attractive condition according to any rules promulgated by the Community Board and any Neighborhood Association. Any Neighborhood Association shall maintain any landscaped areas which it owns or which are owned in common by its members in a clean, safe, and attractive condition according to any rules promulgated by the Community Board.

9.5.2. Right of Community Association to Maintain and Install. If any Owner fails to maintain the property in accordance with the requirements of this Article, and, if applicable, the Neighborhood Association fails to perform its duty of enforcing the maintenance obligations of an Owner, the Community Association may cause such maintenance and installation to be accomplished as hereinafter set forth.

(a) Upon a finding by the Community Board of deficiency in such maintenance or

installation, the Community Board may give notice of deficiency to the responsible Owner which shall briefly describe the deficiency and set a date for hearing before the Community Board or a committee selected by the Community Board for such purposes. The Community Board may delegate its power under this Subsection to a duly appointed committee of the Community Association.

(b) Such hearing shall be held not less than ten (10) nor more than thirty (30) days from the date of said notice.

(c) Such hearing shall be conducted pursuant to such reasonable rules and procedures as the Community Board shall adopt and shall provide the Owner with the right to present oral and written evidence and to confront and cross-examine adverse witnesses. If the Community Board, or any such committee, renders a decision against the responsible Owners, it shall further set a date by which the deficiency is to be corrected by the responsible Owner. A decision of such committee may be appealed to the Community Board, but a decision of the Community Board shall be final.

(d) If the deficiency continues to exist after the time limitation imposed by a final decision of the Community Board, or any such committee, the Community Board or such committee after approval by a majority of either, may enter upon the Lot and cause such maintenance or installation to be accomplished.

(e) If the Community Board, or such committee, elects to cause such maintenance or installation to be accomplished, the following shall apply:

(i) The responsible Owner shall have no more than ten (10) days following the receipt of written notice of such election from the Community Board, or such committee to select a day or days upon which such maintenance or installation work shall be accomplished;

(ii) The date which said Owner selects shall be not less than fifteen (15) days nor more than forty-five (45) days following the last day of said ten (10) day period;

(iii) If said Owner does not select such day or days within said ten (10) day period, the Community Board or such committee may select a day or days upon which such work may be accomplished which shall be not less than twenty-five (25) nor more than fifty-five (55) days from the last day of the said ten (10) day period; and

(iv) Unless the Owner and the Community Board otherwise agree, such maintenance or installation shall take place only during daylight hours, Monday through Friday, excluding holidays.

(f) If the Community Association pays for all or any portion of such maintenance, repair or installation, the cost thereof shall be charge to the Owner of the Lot, and, if not paid in a timely manner, shall be an assessment.

## **ARTICLE X INSURANCE**

10.1. Types. The Community Association, to the extent available, shall obtain and continue

in effect, in its own name, the types of insurance set forth below:

10.1.1. Fidelity Bonds. Fidelity coverage against dishonest acts on the part of Community Directors, officers, employees or volunteers who handle or who are responsible to handle the funds of the Community Association, and such fidelity bonds shall (a) name the Community Association as obligee, (b) shall be written in an amount equal to at least the estimated maximum of funds, including reserves, in the custody of the Community Association or a management agent at any given time during the term of the fidelity bond; provided, however, that the bond shall not be less than a sum equal to three (3) months aggregate Regular Assessments on all Lots plus Reserve Funds, (c) shall contain waivers of any defense based on the exclusion of persons who serve without compensation or from any definition of "employee" or similar expression, and (d) shall provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days prior written notice to Mortgagees.

10.2 Required Provisions. All such property and liability insurance shall be subject to the following provisions and limitations:

10.2.1. Named Insured. The named insured under any such policies shall be the Community Association as a trustee for the Members or their authorized representative, including any trustee with which such Community Association may enter into any insurance trust agreement, or any successor trustee, each of which shall be herein elsewhere referred to as the "Insurance Trustee" who shall have exclusive authority to negotiate losses under said policies. If required by Declarant, the Community Association shall name Declarant as additional insured.

10.2.2. Contribution. In no event shall the insurance coverage obtained and maintained pursuant to the requirement of this Article be brought into contribution with other insurance purchased by the Neighborhood Association, Owners, or their Mortgagees.

10.3. Neighborhood Association. Each policy of public liability insurance maintained by Neighborhood Associations shall name Declarant as an additional insured.

10.4. Waiver by Members. As to each of said policies which will not be voided or impaired thereby, the Members hereby waive and release all claims against the Community Association, the Community Board, the Declarant, and agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but to the extent of insurance proceeds received in compensation for such loss only.

10.5. Other Insurance; Annual Review. The Community Association shall purchase, if available, officers' and directors liability and errors and omission insurance and may purchase such other insurance as it may deem necessary. If the Community Board determines that increased coverage or additional insurance is appropriate, it shall obtain the same. If the Community Board determines, in its reasonable and good faith judgment, that increased, decreased or additional insurance is required, it shall take appropriate action.

10.6. Premiums and Proceeds. Insurance premiums for any such blanket insurance coverage obtained by the Community Association and any other insurance deemed necessary by the Community Association shall be a Common Expense to be included in the Regular Assessments levied by the Community Association. Insurance proceeds shall be used by the Community Association for the repair or replacement of the property for which the insurance was carried, or

otherwise disposed of as provided herein. Any two (2) Community Directors may sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures shall be binding on the Community Association and the Members and Owners.

10.7 Abandonment of Replacement Cost Insurance. Unless unavailable at reasonable costs in the insurance market or unless at least two-third (2/3) of the Institutional Mortgagees (based on one (1) vote for each First Mortgage) have given their prior written approval, the Community Association shall not be entitled to fail to maintain the extended coverage fire and casualty insurance required by this Article on less than a one hundred percent (100%) current replacement cost basis, if available, subject to reasonable deductible amounts and co-insurance provisions which may be approved by the Community Board.

10.8. Requirements of Federal Agencies. Notwithstanding the foregoing provisions of this Article, the Community Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements by the Federal Housing Administration, the Veterans Administration and/or the Department of Housing and Urban Development (the "Federal Agencies"), so long as it insures or guarantees a Mortgage on a Lot, except to the extent such coverage is not available or has been waived in writing by the foregoing entities.

## **ARTICLE XI EASEMENTS**

11.1. Amendment to Eliminate Easement. This Declaration cannot be amended to modify or eliminate the easements reserved to Declarant herein without prior written approval of Declarant and any attempt to do so shall have no effect. Any attempt to modify or eliminate this Article shall likewise require the prior written approval of Declarant.

11.2. Owners' Easements and Encroachments. An Owner's right to use his or her Lot and the Neighborhood Common Area shall be subject to the easements and encroachments described below.

11.2.1. Utility Easements. Wherever sanitary sewer house connections, water house connections, electricity, gas, telephone and cable television lines or drainage facilities are installed within the Property, the Owners of any Lot served by said connections, lines or facilities shall have the right, and there is hereby reserved to Declarant, together with the right to grant and transfer the same to Owners, an easement to the full extent necessary therefor, to enter upon the Lots owned by others, or to have utility companies enter upon the Lots owned by others, in or upon which said connections, lines or facilities, or any portion thereof are located to repair, replace and generally maintain said connections as and when the same may be necessary as set forth below, provided that such Owner or utility company shall promptly repair any damage to a Lot caused by such entry as promptly as possible after completion of work thereon.

11.2.2. Utility Connections. Wherever sanitary sewer house connections, water house connections, electricity, gas, telephone or cable television lines, or drainage facilities are installed within Gleneagles, which connections serve more than one (1) Lot, the Owner of each Lot served by said connections shall be entitled to the full use of such portions of said connections which service the Owner's Lot.

11.3. Easements Reserved to Declarant. There are hereby reserved to Declarant,

together with the right to grant and transfer the same, as well as to any other mentioned, the easements set forth below:

11.3.1. Utilities. Easements on, over, under, through and across the Property for the purpose of constructing, erecting, operating and maintaining facilities and Improvements, including without limitation, easements for the installation and maintenance of electric, telephone, cable television, water, gas, sanitary sewer lines, and drainage facilities, roads, park areas, parkways and walkways as may be shown on any approved final development plan or recorded subdivision plat of the Property or as are required by Tooele County.

11.3.2. Cable Television. The right to place on, under or across the Property, transmission lines and other facilities for a community antenna television system and satellite master antenna television system and thereafter to own the Property to service, maintain, repair, reconstruct and replace said lines or facilities..

11.3.3. Association Easements. To Declarant and the Community Association or their duly authorized agents and representatives, such rights of entry as are necessary to perform the duties and obligations of the Community Association as are set forth in this Declaration, or in the Community Bylaws, Community Articles, Community Association Rules or the Architectural Standards.

11.3.4. Community Association Easement. A nonexclusive easement over the Neighborhood Common Area, together with the right to grant and transfer the same to the Community Association, for the purpose of fulfilling said Neighborhood Association's maintenance or other responsibilities.

11.4. Nature of Easements. Any easements reserved to Declarant herein, when transferred to an Owner or the Neighborhood Association in the same instrument conveying a Lot to such Owner or the Neighborhood Association, as the case may be, shall be appurtenant to such Owner's interest in said Lot. Use of easements or work in easement areas shall be done in manner which reasonably limits adverse impacts on adjacent land owners and disturbance of land shall be restored by party causing disturbance.

11.5. Transfer of Easements. As to the easements reserved to Declarant, together with the right to grant and transfer the same to Owners, Declarant shall convey said easements to the Owners in the same instrument conveying the interest required by an Owner by specific description or by reference in said instrument. If such description is not contained in said instrument, such easements shall nevertheless be deemed conveyed to each Owner by such instrument.

## **ARTICLE XII**

### **ANNEXATION OF REAL PROPERTY**

12.1 Annexation. Declarant may annex any of the Annexable Property described in Exhibit "B" by any of the methods set forth hereinafter in this Article. Declarant intends to develop the Annexable Property on a phased basis. However, Declarant may elect not to develop all or any part of such real property, to annex such real property to this Declaration in increments of any size whatsoever, or to develop more than one such increment at any given time and in any given order. Although Declarant shall have the right to annex the Annexable Property as provided in this Article, Declarant shall not be obligated to annex all or any portion of such Annexable Property. Moreover, Declarant reserves the right to subject any of the Annexable Property which is not subject to the

provisions of this Declaration to one or more separate declarations of covenants, conditions and restrictions and to subject such property to the jurisdiction and power of the Community Association or to another nonprofit mutual benefit corporation or other entity with powers and obligations similar to the Community Association.

12.2. Annexation Without Approval. All or any part of the Annexable Property may be annexed to and become subject to the Declaration and subject to the jurisdiction of the Community Association by Declarant without the approval, assent or vote of the Community Association or its Members, provided that:

12.2.1. Annexation of Property for FHA or VA Neighborhood.

(a) Before annexation of any of the Annexable Property that is being developed as a phased Federal Housing Administration ("FHA") and/or Veterans Administration ("VA") Neighborhood, it shall be determined that such annexation plans are in accordance with the previously approved general plan; and

(b) Each Supplementary Declaration affecting the Annexation contemplated under this Section must be executed by Declarant.

12.2.2. Annexation Pursuant to Approval. Upon the expiration of the Declarant's power to annex the Annexable Property in accordance with the provisions hereof, or if any person desires to subject property other than the property described on Exhibit "B" to this Declaration and to the jurisdiction of the Community Association, then such property may be annexed, if the vote or written assent of two-thirds (2/3) of the Total Voting Power residing in Members of the Community Association other than Declarant and Builders is obtained. The recordation of a Supplementary Declaration shall constitute and effectuate the Annexation of the real property described therein, making said real property subject to this Declaration and subject to the functions, powers and jurisdiction of the Community Association; and thereafter said annexed real property shall be part of the Property and subject to all of the terms and provisions of this Declaration. If the vote or written assent of a certain percentage of Members is required to annex any property as provided for above, then the recordation of a Supplementary Declaration certified to by the President or Vice-President and Secretary or Assistant Secretary shall constitute and effectuate the Annexation of said real property and for the purpose of recording any such instrument, and each Owner hereby grants to the President or the Vice-President and Secretary or Assistant Secretary of the Community Association an irrevocable power of attorney for and on behalf of each and every Owner in certifying, executing and recording said instrument.

12.2.3. Covenants Running With the Land. Declarant may transfer all or any portion of the Annexable Property to a Builder under a deed wherein Declarant reserves the right to annex such property and subject it to this Declaration. The restriction on the Property described in Exhibit "B" wherein it may be made subject to this Declaration upon the recordation of a Supplementary Declaration is hereby declared to be an equitable servitude upon the Annexable Property in favor of the Property subject to this Declaration and any other real property owned by Declarant in the vicinity of the Property and shall run with the land and be binding on and inure to the benefit of all parties having or acquiring any right, title or interest, in such real property.

12.3. Supplementary Declarations. Supplementary Declarations contemplated above may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if

any, of the annexed property and as are not inconsistent with the plan of this Declaration. In no event, however, shall any such Supplementary Declaration or any merger or consolidation revoke, modify or add to the covenants established by this Declaration, discriminate between some Owners of such Property and other Owners of any other Property within Gleneagles except as provided herein, change the general common plan created by this Declaration, or affect the provisions hereof or thereof as covenants running with the land or equitable servitudes. The express desired intention of Declarant is to establish a cohesive plan of such covenants and servitudes to be uniformly applicable to Gleneagles, including those portions added thereto by annexation.

12.4. De-Annexation. Declarant may delete all or any portion of the annexed land from the coverage of this Declaration and rescind any Supplementary Declaration, provided Declarant is the sole beneficial Owner of all of the real property described in the Supplementary Declaration to be rescinded. Such deletion shall be effective upon the recordation of a "Notice of Deletion of Territory," signed by Declarant.

### **ARTICLE XIII MORTGAGEE RIGHTS**

13.1. Special Mortgagee Provisions. It is anticipated that part or all of the Lots in Gleneagles may be financed for the Owners through Federal Agencies. The interest of the Community Association and each of the Members is and shall be subject to and subordinate to the rules, regulations and requirements of such Federal Agencies purchasing Mortgages in Gleneagles. As the requirements of such Federal Agencies are subject to change, if necessary, Declarant shall execute and cause to be recorded a Supplemental Declaration, incorporating such additional covenants, conditions and restrictions as are required by such Federal Agencies, affecting the properties. Notwithstanding prior acquisition of title to any portion of property in Gleneagles by the Community Association, any Neighborhood Association, or any Owner, such supplemental covenants, conditions and restrictions shall be binding upon all Members, the Community Association, and all Neighborhood Associations. Declarant may execute as many such Supplemental Declarations as are required to comply with such Federal Agency's requirements from time to time throughout the course of sale of the Lots. Declarant may bind the Community Association and all Owners by written consent with such Federal Agencies.

13.2. Conflict. Notwithstanding any contrary provision contained elsewhere in this Declaration or in the Community Bylaws, Community Articles or Community Association Rules, the provisions of this Article shall control with respect to the rights and obligations of Institutional Mortgagees specified herein.

13.3. Termination of Contract and Agreements. Any contract or lease, including any contract providing for the services of Declarant, entered into by the Community Association while Declarant controls the Community Association shall be for a term not to exceed three (3) years and shall provide that the Community Association has the right to terminate such contract or lease with cause open thirty (30) days written notice, and without cause and without penalty or the payment of a termination fee at any time after the transfer of control of the Community Association from Declarant upon not more than ninety (90) days notice to the other party. For purposes of this Section, the term "control" shall mean the right of Declarant to exercise unilateral control over the Community Association, the Community Board, or the Owners in any manner other than by Declarant's exercise of votes allocated to Declarant on the same basis as votes are allocated to other Owners.



13.4. Notice to Mortgage Holders. A Mortgagee shall not be entitled to receive any notice which this Declaration requires the Community Association to deliver to Mortgagees unless and until such Mortgagee, or its mortgage servicing contractor, has delivered to the Community Board a written notice stating that such Mortgagee is the holder of a Mortgage encumbering a Lot within the Property (herein any Mortgagee delivering such notice shall be referred to as an "Eligible Holder"). Such notice shall state which Lot or Lots are encumbered by such Mortgage, and whether such Mortgagee is a First Mortgagee. Whenever the approval of all or a specified percentage of Mortgagees is required pursuant to this Declaration, it shall be deemed to mean the vote or approval of all or a specified percentage only of the Eligible Holders. Notwithstanding the foregoing, if any right of a Mortgagee under this Declaration is conditioned on a specific written request to the Community Association, in addition to having delivered the notice provided in this Section, a Mortgagee must also make such request, either in a separate writing delivered to the Community Association or in the notice provided above in this Section, in order to be entitled to such right. Except as provided in this Section, a Mortgagee's rights pursuant to this Declaration, including, without limitation, the priority of the lien of Mortgages over the lien of Community Association levied by the Community Association hereunder shall not be affected by the failure to deliver a notice to the Community Board. Any notice or request delivered to the Community Board by a Mortgagee shall remain effective without any further action by such Mortgagee for so long as the facts set forth in such notice or request remain unchanged. An Eligible Holder is entitled to timely written notice of:

13.4.1. Any condemnation loss or casualty loss which affects either a material portion of the Property or the Lot on which the Eligible Holder holds a First Mortgage;

13.4.2. Any delinquency in the payment of assessments or charges owed by the Owner of a Lot which is subject to a First Mortgage held by the Eligible Holder if the delinquency is not cured within ninety (90) days after its due date;

13.4.3. Any lapse, cancellation or material modification of insurance policy or fidelity bond maintained by the Community Association;

13.4.4. Any proposal to take any action which requires the consent of a specified percentage of Eligible Holders; or

13.4.5. Any default by an Owner-Mortgagor of a Lot in the performance of his obligations under this Declaration or Community Bylaws, which is not cured within ninety (90) days.

13.5. Inspection of Books and Records. Upon written request, any Owner, First Mortgagee or Institutional Mortgagees shall be entitled to inspect the books, records and financial statements of the Community Association and this Declaration, the Community Bylaws, the Community Articles and the Community Association Rules and any amendments thereto during normal business hours and subject to payment of cost for personnel and the like.

13.6. Voting Rights of Mortgagees. For purposes of this Section, a Mortgagee shall be entitled to one (1) vote for each Lot encumbered by a First Mortgage held by the Mortgagee.

13.7. Actions Requiring Mortgagee Votes. Neither the Community Association nor any Owner shall do any of the following, unless at least sixty-seven percent (67%) of the Eligible Holders have given their prior written approval;

13.7.1. By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any property or Improvements owned, directly or indirectly, by the Community Association for the benefit of the Lots and Owners. (The granting of easements or dedication of land for public utilities, roads or for other public purposes consistent with the intended use of the property by the Community Association and Owners shall not be deemed a transfer within the meaning of this Subsection);

13.7.2. By act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to architectural design or exterior appearance of Lots, the exterior maintenance of Lots, the maintenance of party walls, fences or driveways, or the upkeep of lawns, plantings or other landscaping within Gleneagles;

13.7.3. By act or omission change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner;

13.7.4. Use hazard insurance proceeds for losses to any property or Improvements owned by the Community Association other than for the repair, replacement or reconstruction of the property and Improvements.

13.8. Votes for Termination of Neighborhood. Any election to terminate the legal status of the Property as a planned unit development shall require:

13.8.1. The approval of at least fifty-one percent (51%) of the Eligible Holders if the election to terminate the legal status is a result of substantial destruction or a substantial taking in condemnation of the Property; or

13.8.2. The approval of sixty-seven percent (67%) of Gleneagles Voting Power and of sixty-seven percent (67%) of the Eligible Holders.

13.9. Condemnation or Destruction. In the event a portion of the Property is either condemned or destroyed or damaged by a hazard that is insured against restoration or repair, it shall be performed substantially in accordance with the provisions of this Declaration and the original plans and specifications for the Property, unless fifty-one percent (51%) of the Eligible Holders approve the taking of other action by the Community Association.

13.10. Mortgagee Protection. A breach of any of the conditions contained in this Declaration shall not defeat nor render invalid the lien of any Mortgage made in good faith and for value as to any Lot within the Property; provided, however, that the conditions contained in this Declaration shall be binding upon and effective against any Owner of a Lot if the Lot is acquired by foreclosure, trustee's sale or otherwise.

13.11. Distribution of Insurance and Condemnation Proceeds. No Owner, or any other party, shall have priority over any right of Institutional First Mortgagees of Lots pursuant to their Mortgages in case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of units or common area. Any provision to the contrary in this Declaration or in the Community Bylaws or other documents relating to the Property is to such extent void. All applicable fire and all physical loss or extended coverage insurance policies shall contain loss payable clauses naming the Mortgagees, as their interests may appear.

13.12. Non-Curable Breach. Any Mortgagee who acquires title to a Lot by foreclosure or

by deed in lieu of foreclosure shall not be obligated to cure any breach of this Declaration that is non-curable or of a type that is not practical or feasible to cure.

13.13. Loan to Facilitate. Any Mortgage given to secure a loan to facilitate the resale of a Lot after acquisition by foreclosure or by a deed in lieu of foreclosure shall be deemed to be a loan made in good faith and for value and entitled to all of the rights and protections of this Article.

13.14. Appearance at Meetings. Because of its financial interest in the Property, any Mortgagee may appear (but cannot vote except under the circumstances set forth herein) at meetings of the Members and the Community Board to draw attention to violations of this Declaration that have not been corrected or made the subject of remedial proceedings or assessments.

13.15. Right to Furnish Information. Any Mortgagee can furnish information to the Community Board concerning the status of any Mortgage.

13.16. Inapplicability of Right of First Refusal to Mortgagee. No right of first refusal or similar restriction of right of an Owner to sell, transfer or otherwise convey the Owner's Lot shall be granted to the Community Association without the written consent of any Mortgagee of the Lot. Any right of first refusal or option to purchase a unit that may be granted to the Community Association (or other person, firm or entity) shall not apply to any conveyance or transfer of title to such Lot, whether voluntary or involuntary, to a Mortgagee which acquires title to or ownership of the unit pursuant to the remedies provided in its Mortgage or by reason of foreclosure of the Mortgage or deed in lieu for foreclosure.

#### **ARTICLE XIV AMENDMENT AND TERM OF DECLARATION**

14.1. Amendments. During the period commencing on the date of this Declaration and ending four (4) years from the date the first Lot is conveyed to an Owner (excluding Builders) Declarant may unilaterally amend this Declaration without any vote from any other Owner or any Mortgagee; provided however, such amendment does not result in a material and adverse effect on the Owners or Mortgagees. After the sale of a Lot to an Owner other than Declarant or Builders, this Declaration may be amended by an instrument in writing, signed and acknowledged by the President or Vice-President and Secretary or Assistant Secretary of the Community Board after approval of the amendment at a meeting of the Community Members duly called for such purpose.

The vote (in person or by proxy) or written consent of: (a) at least sixty-seven percent (67%) of the Class A votes and at least sixty-seven percent (67%) of the Class B votes and (b) sixty-seven percent (67%) of the Eligible Holders (based on one vote for Lot covered by each Mortgage held) shall be required to add to, amend or modify, whether for final amendment or otherwise, any material provision of this Declaration which establishes, provides for, governs or regulates any of the following subjects:

- 14.1.1. Voting;
- 14.1.2. Assessments, assessment liens, or subordination of such liens;
- 14.1.3. Insurance or Fidelity Bonds;
- 14.1.4. Expansion or contraction of Gleneagles or the addition, annexation, or

withdrawal of property to or from Gleneagles;

14.1.5. Boundaries of any Lot;

14.1.6 . Imposition of any right of first refusal or similar restriction on the right of a Owner to sell, transfer or otherwise convey his or her Lot;

14.1.7 . Any provisions which are for the express benefit of mortgage holders, eligible mortgage holders, or eligible insurers or guarantors of First Mortgages on Lots;

14.1.8 . A decision by the Community Association to establish self-management when professional management has been required previously by an Eligible Holder;

14.1.9 . Any action to terminate the legal status of Gleneagles after substantial damage or destruction occurs; or

14.1.10. Restoration or repair of Gleneagles (after a hazard damage or partial condemnation) in a manner other than that specified in this Declaration.

Amendments, modification, or additions to this Declaration other than those set forth above require the vote, in person or by proxy, or the written consent, of at least sixty-seven percent (67%) of the Class A votes and at least sixty-seven percent (67%) of the Class B votes.

An addition or amendment to this Declaration shall not be considered material if it is for the purposes of correcting technical errors or for clarification only. If an addition or amendment is not material, any Eligible Holder who received a written request to approve additions or amendments who does not respond within thirty (30) days, shall be deemed to have approved such addition or amendment. Notwithstanding the foregoing, the percentage of a quorum or the voting power of the Community Association or of Members other than the Declarant necessary to amend a special clause or provision of this Declaration shall not be less than the prescribed percentage of affirmative when votes required for action to be taken under this clause or provision. An amendment or modification shall be effective when executed by Secretary of the Community Association who shall certify that the amendment or modification has been approved as hereinabove provided, and shall record the amendment in the Land Records. For the purpose of recording such instrument, each Owner, hereby grants to the President or Vice President and Secretary or Assistant Secretary of the Community Association an irrevocable power of attorney to act for and on behalf of each and every Owner in certifying, executing and recording said instrument. Notwithstanding anything to the contrary contained herein, in no event may any of Declarant's rights or privileges under the Community Articles, Community Bylaws or this Declaration be terminated, altered or amended without Declarant's prior written consent.

14.2. Term. The covenants, conditions and restrictions of this Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable by the Community Association or any Member, their respective legal representatives, heirs, successors, and assigns, for a term of sixty (60) years from the date this Declaration is recorded, after which time said covenants, conditions and restrictions shall be automatically extended for a successive period of ten (10) years, unless an instrument, signed by a majority of Gleneagles Voting Power has been recorded, at least one (1) year prior to the end of any such period agreeing to change said covenants, conditions and restrictions in whole or in part. After said initial term, this Declaration may be terminated by the written assent of seventy-five percent (75%) of all of Gleneagles Voting Power.

**ARTICLE XV**  
**MISCELLANEOUS**

15.1. Enforcement.

15.1.1. Rights of Enforcement. The Community Association or any Owner shall have a right to action against any Owner, and any Owner shall have a right of action against the Community Association, to enforce by proceedings at law or in equity, all restrictions, conditions, covenants and reservations, now or hereafter imposed by the provisions of this Declaration or any amendment thereto, including the right to prevent the violation of such restrictions, conditions, covenants, or reservations and the right to recover damages or other dues for such violation except that Owners shall not have any right of enforcement concerning Community Association liens. The Community Association or any Owner shall also have the right to enforce by proceedings at law or in equity the provisions of the Community Articles or Community Bylaws and any amendments thereto. The Community Association shall have the exclusive right to the enforcement of provisions relating to architectural control and Community Association Rules, unless the Community Association refuses or is unable to effectuate such enforcement, in which case any Owner who otherwise has standing shall have the right to undertake such enforcement.

15.1.2. Disputes Between Community Association and Declarant. Any controversy, dispute, or claim whatsoever between the Community Association and Declarant or arising out of or concerning the interpretation, performance or breach of any of the provisions of this Declaration shall be determined, at the request of either party, by an arbitrator who shall be a retired judge of the Tooele County Circuit Court. If the parties cannot agree upon an arbitrator, one shall be appointed by the Chief Judge of the Tooele County Circuit Court from among that Court's list of retired judges.

15.1.3. Disputes Between Community Association and Owners. Any controversy, dispute, or claim whatsoever between the Community Association and any Owner other than Declarant arising out of or concerning in interpretation, performance or breach of any of the provisions of this Declaration, including, without limitation, the validity, scope and enforceability of this arbitration provision, shall be settled, at the request of either party, by arbitration conducted in the Tooele County in accordance with the then existing rules for commercial arbitration of the American Arbitration Association, and judgment upon any award rendered by the arbitrator may be entered by any State or Federal Court having jurisdiction thereof. Such matters shall be submitted to one (1) arbitrator who shall be a retired judge of the Circuit Court for Tooele County. If the parties cannot agree upon an arbitrator, one shall be appointed by the Chief Judge of the Circuit Court for Tooele County from among that Court's list of retired judges.

15.1.4. Revocation of Dispute Resolution Procedures. Either or both of the two preceding subsections may be terminated, and shall be of no further effect concerning controversies, disputes, or claims which arise after such termination, if within ninety (90) days after a majority of the members of the Community Board have been elected for the first time by Members other than Declarant, such termination is approved by (a) a majority of the Community Board, and (b) a majority vote of the Members other than Declarant. Notwithstanding the provisions of hereof, an amendment to this Declaration covering such termination may be recorded in the Land Records of Tooele County without the approval of any other persons, including, without limitation, the Declarant or Eligible Mortgage Holders, if such amendment is recorded with a certificate of the President and Secretary attached thereto certifying that the approval of the Community Board and

of the Members other than Declarant required by this subsection has been obtained within the time period specified herein.

15.1.5. Vote Requirements. Notwithstanding the foregoing, neither the Community Association nor any person acting or purporting to act on its behalf shall (a) file or otherwise commence, or prosecute, in any jurisdiction whatsoever, any (i) civil, criminal or administrative proceeding in or with any court or administrative body or officer, or (ii) appeal of or objection to any decision or other action made or taken by any court or administrative body or officer, in any judicial or administrative proceeding, or (b) testify or submit evidence (except where required by law, subpoena or formal order of such court, administrative body or officer), or otherwise take a formal position on any issue under consideration, in any such proceeding or appeal, in all cases until such action is approved in writing by, or by the vote of, both Members entitled to cast at least seventy-five percent (75%) of the votes held by all Owners other than Declarant, and at least seventy-five percent (75%) of the votes of Class B Member. Nothing in this subsection shall apply to a civil or administrative proceeding which the Association commences or prosecutes with a court or administrative body or officer (a) to collect an Assessment, or enforce or foreclose a lien securing an Assessment, (b) otherwise to enforce the Association's rights or another person's obligations under the Declaration, Community Bylaws or Articles of Incorporation on account of a default or otherwise or (c) any action taken by the Declarant at any time or action undertaken by the Architectural Committee during the Development Period.

15.2. Equitable Servitudes. The provisions of this Declaration shall be deemed covenants, conditions and restrictions and equitable servitudes running with the land, which may be enforced by any Owner, a Neighborhood Board, or the Community Board, unless enforcement is specifically limited herein to a particular person or group, and which shall be liberally construed to effectuate the purpose of Declarant creating a uniform plan for the development and operation of Gleneagles. In the event of a default in the performance of any of the provisions of this Declaration, the Community Articles, and Community Bylaws or the failure of any Owner to comply with this Declaration, the Community Articles, or Community Bylaws, such default or failure may be resolved by all appropriate legal proceedings including but not limited to by injunction and damages.

15.3. Severability. In any phrase, clause, sentence, paragraph, section, article or other portion of this Declaration shall become illegal, null or void or against public policy, or any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Declaration shall not be affected thereby and shall remain in full force and effect.

15.4. Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community or tract and for the maintenance of Gleneagles. The Article and Section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions or interpretation or construction.

15.5. Number and Gender. Whenever the context of this Declaration requires same, the singular shall include the plural and the masculine shall include the feminine.

15.6. Nuisance. The result of every act or omission, whereby any provision, condition, restriction, covenant, easement, or reservation contained in this Declaration is violated in whole or in part, is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result, any may be exercised by the Community Association or any Member. Such remedy shall be deemed cumulative and not exclusive.

15.7. No Waiver. Failure by the Community Association or by any Member to enforce any provision of the Master Management Documents in any certain instance or on any particular occasion shall not be deemed a waiver of such right on any such future breach of the same or any other such provision.

15.8. Cumulative Remedies. All rights, options and remedies of Declarant, the Community Association, the Owners or Mortgagees under this Declaration are cumulative, and no one of them shall be exclusive of any other. Declarant, the Community Association, the Owners and the Mortgagees shall have the right to pursue any one or all of the such rights, options and remedies or any other remedy or relief which may be provided by law, whether or not stated in this Declaration.

15.9. Attorneys' Fees. If action is instituted to enforce any of the provisions contained in this Declaration by the Community Association, it shall be entitled to recover from the other party thereto as part of the judgment, reasonable attorneys' fees and costs of such suit. In the event the Community Association is the prevailing party in such action, the amount of such attorneys' fees and costs shall be an Enforcement Assessment with respect to the Lot(s) involved in the action.

15.10. Exhibits and Schedules. All exhibits and schedules attached hereto are hereby incorporated into this Declaration.

15.11. Notices. Any notice to be given to an Owner or a Mortgagee or mortgage servicing contractor under the provisions of this Declaration shall be in writing and may be delivered as follows:

15.11.1. Notice to an Owner shall be deemed to have been properly delivered when delivered personally or placed in the first class United States mail, postage prepaid, to the most recent address furnished by such Owner in writing to the Community Association for the purpose of giving notice, or if no such address shall have been furnished, then to the street address of such Owner's Lot. Any notice deposited in the mail within Utah shall be deemed delivered on the second mail delivery day after such deposit.

15.11.2. Notice to a Mortgagee or its mortgage servicing contractor shall be deemed to have been properly delivered when placed in the first class United States mail, postage prepaid, to the address furnished to the Community Association by such Mortgagee or such contractor for purposes of notice or, if no such address is furnished, to any office of the Mortgagee in Tooele County, Utah or, if no such office is located in said County, to any office of such Mortgagee.

15.12. Declarant Exemption. Until the expiration of the Development Period, Declarant shall not be subject to the provisions hereof regarding architectural control or use restrictions.

15.13. Conflicts Between Master Management Documents. In the event of a conflict between any provisions of any of the Master Management Documents with the provisions of another Master Management Document, the provisions of the Controlling Document named below in the first column shall be deemed to supersede the provisions of the Subordinate Document or Documents named below in the second column to the extent of any such conflict.

CONTROLLING DOCUMENTS

SUBORDINATE DOCUMENTS

- |                        |  |
|------------------------|--|
| (a) Declaration        | Community Articles, Community Bylaws, Architectural Standards, and Community Association Rules |
| (b) Community Articles | Community Bylaws, Architectural Standards and Community Association Rules                      |
| (c) Community Bylaws   | Architectural Standards and Community Association Rules  |

15.14. Conflicts Between Master Management Documents and Neighborhood Association Documents. In the event of any conflict between the Master Management Documents and any provisions of the articles, bylaws, Neighborhood Declaration, architectural standards and rules and regulations of a Neighborhood Association, the Master Management Documents shall be deemed to supersede such Neighborhood Association documents to the extent of such conflict.

15.15. Effect of Declaration. This Declaration is made with the intent to establish a general scheme for the use and occupancy of the Property and each and every Lot and portion thereof. Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances and regulations applicable thereto.

15.16. FHA/VA Approval. After the first sale of a Lot to an Owner, other than Declarant or Builders, and for so long as there is a Class B Membership, the following actions will require the prior approval of the Federal Housing Administration and the Veterans Administration:

- 15.16.1. A merger, consolidation or dissolution of the Community Association;
- 15.16.2. Establishment of any right of first refusal in the Community Association to purchase or lease a Lot;
- 15.16.3. Annexation of additional properties; and
- 15.16.4. Amendment of the Community Articles, Declaration or Community Bylaws.

15.17. Non-liability of Officials. To the fullest extent permitted by law, neither the



Community Board, the Architectural Committee and other committees of the Community Association or any member of such Community Board or committee shall be liable to any Member of the Community Association for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, omission, error, negligence or the like made in good faith within which such Community Board, committees or persons reasonably believed to be the scope of their duties.

15.18. Documents to be Provided to Prospective Purchasers.

15.18.1. By Owner. As required by the Utah Homeowners Association Act, an Owner shall provide the information to a prospective purchaser required by the Utah Homeowners Association Act (the "Act") before transferring title to his Dwelling or executing a real property sales contract.

15.18.2. By Community Association. Upon written request, the Community Association shall, within ten (10) days after the mailing or delivery of the request, provide an Owner with a copy of the items that such Owner is required to provide to his prospective purchaser as provided in the Act. The Community Association may charge a fee for this service, provided, however, that such fee shall not exceed the Community Association's reasonable cost to prepare and reproduce the requested items.

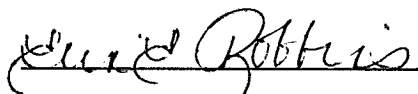
15.19. Violation of Law. Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any portion of the Property is hereby declared to be a violation of this Declaration and subject to any and all of the enforcement procedures herein set forth.


15.20. Governing Law. This Declaration shall be governed by and construed under the laws of the State of Utah.

IN WITNESS WHEREOF, Declarant has executed this instrument as of the day and year first hereinabove written.

WITNESS:

DECLARANT:  
CHESAPEAKE MEADOWS, L.L.C.  
By: Hamlet Homes Corporation,  
its Managing Member



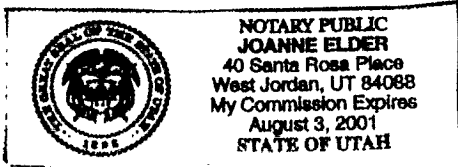
By:   
John Aldous, President Hamlet Homes

STATE OF Utah, CITY/COUNTY OF Salt Lake TO WIT:

I HEREBY CERTIFY that on this 21 day of March, 2001 before, me, the subscriber, a Notary Public of the State of Utah, personally appeared, John Aldous, President of Hamlet Homes, Managing Member of CHESAPEAKE MEADOWS, L.L.C., the Declarant named in the foregoing Declaration of Covenants, Conditions and Restrictions, and who, being authorized to do so, in my presence, signed and sealed the same and acknowledged the same to be the act and deed of the Declarant.

AS WITNESS my hand and seal.

Joanne Elder  
Notary Public



My Commission Expires: 8-3-01

EXHIBIT A

INITIAL INCREMENT OF REAL PROPERTY SUBJECT TO THIS DECLARATION

PARCEL 1

Lots 101 through 163, GLENEAGLES NO. 1 SUBDIVISION, according to the official plat thereof, as recorded in the office of the Tooele County Recorder.

Tax ID No. 13-074-0101 through 13-074-0-0163  
Being 63 Lots and Park

PARCEL 2

Lots 201 through 254, GLENEAGLES P.U.D. PHASE 1, according the official plat thereof, as recorded in the office of the Tooele County Recorder.

Also all the common areas and private roads

Tax ID No.(s) 13-082-0-0201 through 13-082-0-0255  
Being 54 lots and common areas

**EXHIBIT B****PROPERTY WHICH CAN BE ANNEXED**

## PARCEL 3

Beginning at the Northeast corner of Section 20, Township 3 South, Range 4 West, Salt Lake Base and meridian; and running thence North 89°42'47" East 451.18 feet more or less along the North section line of Section 21; thence South 43°55'15" West 174.43 feet; thence North 89°42'47" East 27.90 feet more or less to the West right of Way of the Los Angeles & Salt Lake Railroad; thence South 43°55'15" West 2571.68 feet more or less along said Railroad right of way to a point on the North line of the property owned by James and Daniel O. Clegg, Trustee; thence along said North line North 88°44'00" West 860.86 feet; more or less to an existing fence; thence along said fence line North 00°09'35" East 1466.36 feet more or less; thence continuing along said fenceline North 01°07'58" East 479.16 feet, more or less to the North section line of Section 20; thence along said section North 89°43'06" East 2272.92 feet to the point of beginning.

Tax ID No. 02-003-0-0001, 02-002-0-0001, 02-002-0-0019, 02-02-0-0017, 02-002-0-0022 and 02-002-0-0023

## LESS AND EXCEPTING THE FOLLOWING:

Lots 101 through 163, GLENEAGLES NO. 1 SUBDIVISION, according to the official plat thereof, as recorded in the office of the Tooele County Recorder.

Tax ID No. 13-074-0101 through 13-074-0-0163  
Being 63 Lots and Park

Lots 201 through 254, GLENEAGLES P.U.D. PHASE 1, according the official plat thereof, as recorded in the office of the Tooele County Recorder.

Also all the common areas and private roads

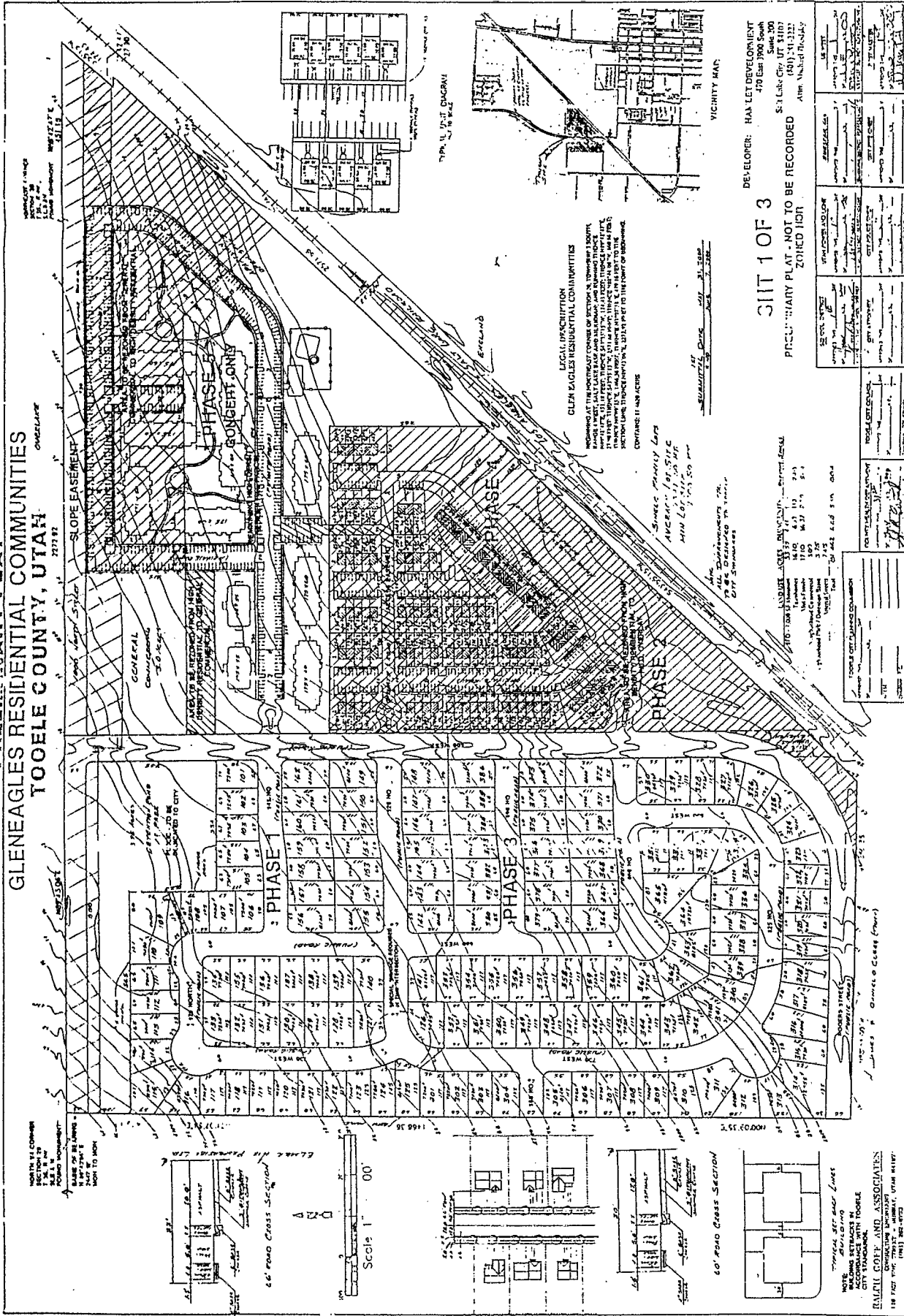
Tax ID No.(s) 13-082-0-0201 through 13-082-0-0255  
Being 54 lots and common areas

AND LESS AND EXCEPTING PROPERTY LYING WITHIN ROADS.

EXHIBIT B

PROPERTY WHICH CAN BE ANNEXED

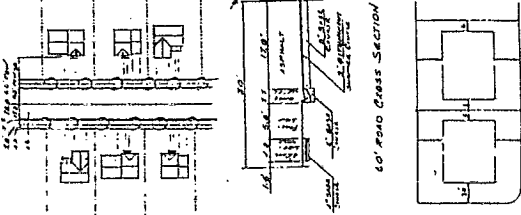
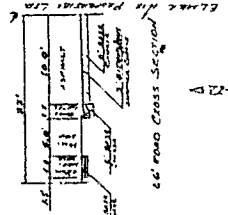
REZONE PLAT  
PRELIMINARY PLAT  
GLENEAGLES RESIDENTIAL COMMUNITIES  
TOOELE COUNTY, UTAH



DEVELOPER: HAN LET DEVELOPMENT  
470 East 3000 South  
Suite 300  
Salt Lake City UT 84119  
(801) 441-2122  
Attn: Michael Haddock

SHEET 1 OF 3  
PRELIMINARY PLAT - NOT TO BE RECORDED  
ZONED I011

NO.	DATE	DESCRIPTION
1	11/15/01	PRELIMINARY PLAT
2	11/15/01	REVISIONS
3	11/15/01	REVISIONS
4	11/15/01	REVISIONS
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99	11/15/01	REVISIONS
100	11/15/01	REVISIONS



SCALE: 1" = 40'  
DATE: 11/15/01  
DRAWN BY: [Name]  
CHECKED BY: [Name]

## EXHIBIT C

**GLENEAGLES COMMUNITY ASSOCIATION, INC.  
INITIAL OPERATING BUDGET**

Gleneagles Community Association			
Budget for 2001-2002			
Gleneagles, Tooele, UT		Phases 1, 2, 3, & 4	
	Phase	Single Family &	Townhomes
	1 & 2	61	60
	3 & 4	86	50
	<b>Total</b>	<b>147</b>	<b>110</b>
	<b>Total Lots</b>	<b>257</b>	
Gleneagles Community Association			
	Yearly	Yearly	Yearly Cost
Maintainence:	Budgeted Cost	Per Home	
Lawn Care:	0		
Street care	\$ 1,285.00	\$ 5.00	
Sprinkler Maintainence:	0		
Recreational Area Upkeep	0		
Irrigation Water Usage:	0		
Trash Collection:	0		
Snow Removal:	0		
Street Lights:	0		
Fence Anti Graffiti:	0		
Management:			
Mgmt/ Clerical/Acc't Fees:	\$ 3,212.50	\$ 12.50	
Gleneagles Community fees	\$ -	0	
Liability Insurance:	\$ 257.00	\$ 1.00	
Directors Insurance:	\$ 257.00	\$ 1.00	
Property Taxes:	\$ -	0	
Legal Contingency/Misc:	\$ 1,028.00	\$ 4.00	
Miscellaneous	\$ 385.50	\$ 1.50	
Capital Reserves:			
Asphalt Courts:	0		
Lawn Sprinklers:	0		
Recreation Equipment:	0		
Concrete HOA Sidewalks:	0		
Concrete Curb:	0		
Fence	0		
Gleneagles Community Association:			
	<b>Yearly Dues</b>		<b>\$ 25.00</b>

**CONSENT AND AGREEMENT OF TRUSTEE AND BENEFICIARY**

FIRST AMERICAN TITLE INSURANCE COMPANY, Trustee, and FIRST SECURITY BANK, N.A., who are, respectively, the Trustee and the Beneficiary under that certain Trust Deed, Assignment of Rents, Security Agreement and Fixture Filing dated July 25, 2000 and recorded in the Recorder's Office for Tooele County, Utah in \_\_\_\_\_ at \_\_\_\_\_ et seq. from Chesapeake Meadows, L.L.C. (the "Trust Deed"), hereby join in the foregoing Declaration for the express purpose of subordinating all of their respective right, title and interest under such Trust Deed in and to the real property described in the Declaration to the operation and effect thereto.

Nothing in the foregoing provisions of this Consent and Agreement of Trustee and Beneficiary shall be deemed in any way to create between the person named in such Declaration as "the Declarant" and any of the undersigned any relationship of partnership or joint venture, or to impose upon any of the undersigned any liability, duty or obligation whatsoever.

IN WITNESS WHEREOF, each of the said Trustee and Beneficiary has executed and sealed this Consent and Agreement of Trustee and Beneficiary or caused it to be executed and sealed on its behalf by its duly authorized representatives, this 21 day of MARCH, 2001.

WITNESS/ATTEST

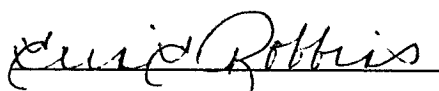
TRUSTEE:  
FIRST AMERICAN TITLE INSURANCE COMPANY

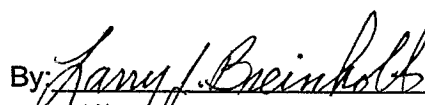


 (SEAL)  
By: BLAKE T. HENEL, VICE PRESIDENT

WITNESS/ATTEST:

BENEFICIARY:  
FIRST SECURITY BANK, N.A.

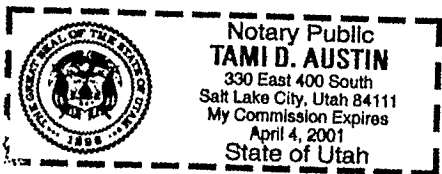


By:  (SEAL)  
VICE PRESIDENT

STATE OF UTAH : COUNTY OF SALT LAKE : TO WIT:

I HEREBY CERTIFY that on this 21st day of March, 2001 before me, a Notary Public for the state aforesaid, personally appeared Blake T. Heiner, the Vice President of FIRST AMERICAN TITLE INSURANCE COMPANY, Trustee, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument, who acknowledged that he, being authorized to do so, has executed it on behalf of the Trustee for the purposes therein set forth, and that it is his act and deed.

IN WITNESS WHEREOF, I have set my hand and Notarial Seal, the day and year first above written.



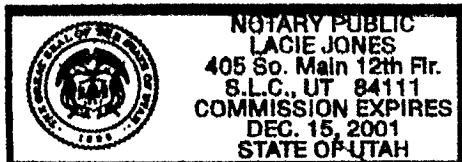
*Tami D. Austin*  
Notary Public

My commission expires on 04-04-01

STATE OF Utah : COUNTY OF Salt Lake : TO WIT:

I HEREBY CERTIFY, that on this 21st day of March, 2001, before me, the subscriber, a Notary Public of the state aforesaid, personally appeared Larry J. Breinholt, who acknowledged himself to be the Vice President of First Security Bank, N.A., Beneficiary, and that he/she, being authorized to do so, executed this Consent and Agreement of Trustee and Beneficiary for the purposes contained therein by signing the on behalf of the Corporation, in my presence.

IN WITNESS WHEREOF, I have set my hand and Notarial Seal, the day and year first above written.



*Lacie Jones*  
Notary Public

My commission expires on Dec 15, 2001