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GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
PAUL NIELSEN  
10813 SO RIVERFRONT PKWY #462  
S JORDAN UT 84095  
BY: ZJM, DEPUTY - WI 71 P.

**AFTER RECORDING PLEASE RETURN TO:**  
**Paul Nielsen**

**10813 So. Riverfront Parkway Ste. 462**  
**South Jordan, Utah 84095**  
**(801) 302-2211**

*11... '15*

**CORRECTED:**  
**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, AND**  
**RESERVATION OF EASEMENT**  
**FOR**  
**BAYWOOD VILLAGE At KIMBALL'S LANE TOWNHOMES**  
**a Utah Planned Unit Development**

THIS Declaration of Covenants, Conditions and Restrictions, and Reservation of Easement for Baywood Village a Utah planned unit development, is made and executed by Kimballs Lane I L.C., a Utah limited liability company, of 2309 Catania Drive, Draper, Utah 84020.

*28-19-38 - 006 thru 015*

RECITALS:

- A. The Property is an area of unique natural beauty, featuring distinctive terrain;
- B. By subjecting the Property to this Declaration, it is the desire, intent and purpose of Declarant to create a community in which beauty shall be substantially preserved, which will enhance the desirability of living on that real estate subject to this Declaration, and which will increase and preserve the attractiveness, quality and value of the lands and improvements therein.
- C. This Declaration of Covenants, Conditions and Restrictions affects that certain real property located in Salt Lake County, Utah described with particularity in Article II below (hereinafter referred to as the "Tract").
- D. Declarant is the owner of the Tract.
- E. Declarant has constructed, is in the process of constructing or will construct upon the Tract a residential subdivision which shall include certain lots, single family homes, townhomes, common area and other improvements. All of such construction has been, or is to be, performed in accordance with the plans and maps to be recorded concurrently herewith.
- F. Declarant intends to sell to various purchasers fee title to the lots or homes contained in the Tract, and a corresponding membership interest in the Association of Lot Owners (which shall own the Common Area), subject to the Plat Map, and the covenants, conditions and restrictions set forth herein.

G. The Project is to be known as Baywood Village.

NOW, THEREFORE, Declarant hereby declares that the Property is and shall henceforth be owned, held, conveyed, encumbered, leased, improved, used, occupied and enjoyed subject to the following uniform covenants, conditions, restrictions and equitable servitudes. The said covenants, conditions, restrictions and equitable servitudes are in furtherance of, and the same shall constitute a general plan for the ownership, improvement, sale, use and occupancy of the Property; they are also in furtherance of and designed to accomplish the desires, intentions, and purposes set forth above in the Recitals.

#### I. DEFINITIONS

It is the Declarant's intent to define key terms. When used in this Declaration (including in that portion hereof entitled "Recitals"), each of the following terms shall have the meaning indicated unless the context clearly requires otherwise. In the event of any conflict, inconsistency or incongruity between the following definitions and those set forth in any other document governing the Project, the former shall in all instances govern and control.

1. Additional Charges shall mean and refer cumulatively to all administrative costs, collection charges, attorneys fees, late fees, service fees, set-up fees, transfer fees, filing fees, recordation fees, default interest, fines and so forth actually incurred or assessed by the Association.
2. Articles of Incorporation shall mean and refer to the Articles of Incorporation of the Association on file or to be filed with the Utah Department of Commerce.
3. Assessment shall mean and refer the allocation of Common Expenses or Additional Charge assessed to each Lot Owner.
4. Association shall mean the association of Lot Owners at Baywood Village at Kimball's Lane Townhomes acting as a group in accordance with this Declaration.
5. Board of Trustees shall mean and refer to the Management Committee, the body responsible for establishing the operational and corporate policies of the incorporated Association and for overseeing their implementation and enforcement. The members of the Board of Trustees shall be selected as provided in the Articles of Incorporation, Declaration and By-Laws.
6. Builder shall mean and refer to any Person purchasing one or more Lots to construct a home or other structure thereon for later sale or one or more Lots or parcels of land within the Project to subdivide, develop, and/or resell in the ordinary course of such Person's business.
7. Building shall mean and refer to any of the structures constructed in the Project.
8. Business and Trade shall be construed to have their ordinary and generally accepted

meanings, which shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (a) such activity is engaged in full or part-time; (b) such activity is intended to or does generate a profit; or (c) a license is required therefor. Anything to the contrary notwithstanding, the leasing of a residence shall not be considered a trade or business within the meaning of this sub-Section.

9. By Laws shall mean and refer to the document setting forth the administrative provisions for the management of the Association, attached hereto, marked Exhibit "C" and incorporated herein by this reference.

10. Capital Improvements shall mean and refer to all new improvements intended to add to, enhance or upgrade the nature, scope, utility, value, or beauty of the Project, as opposed to ordinary repair and maintenance.

11. Capital Improvement Expenses shall mean and refer to all expenses related to the design, purchase, installation, construction, maintenance, repair or replacement of a Capital Improvement.

12. City shall mean and refer to the City of Draper located in the County of Salt Lake and State of Utah.

13. Committee shall mean and refer to the Management Committee unless the context clearly requires otherwise.

14. Common Areas or Common Areas and Facilities shall mean and refer to all real property defined as "Common Area" in this Declaration, including that real property located within the Project in which the Association owns an interest for the common use and benefit of its Members, their successors, assigns, tenants, families, guests and invitees, including but not limited to the following items: (a) The real property and interests in real property submitted hereby, including the entirety of the Tract and all improvements constructed thereon, excluding the individual Lots; (b) All Common Areas and Facilities designated as such in the Plat Map or Maps; (c) All utility installations and all equipment connected with or in any way related to the furnishing of utilities to the Project and intended for the common use of all Lot Owners, such as telephone, electricity, gas, water, and sewer; (d) All portions of the Project not specifically included within the individual Lots; and (e) All other parts of the Project normally in common use or necessary or convenient to the use, existence, maintenance, safety, operation or management of the Property owned by the Association for the common benefit of its Members.

15. Common Expense shall mean and refer to: (a) All sums lawfully assessed against the Lot Owners; (b) Expenses of administration, maintenance, repair, or replacement of the Common Areas and Facilities; (c) Expenses allocated by the Association; (d) Expenses agreed upon as

common expenses by the Association; and (e) Expenses declared common expenses by the Project Documents.

16. County shall mean and refer to the County of Salt Lake located within the State of Utah.

17. Declarant shall mean and refer to Kimballs Lane I, LC, a Utah limited liability company, and its successors and assigns, unless otherwise indicated.

18. Declaration shall mean and refer to this Declaration of Covenants, Conditions and Restrictions of Baywood Village as it may be amended or supplemented from time to time.

19. Dedicated Streets shall mean and refer to those streets and cul-de-sacs within the Project formally dedicated to the City, the County, or any other municipal or governmental body politic, entity or agency.

20. Dwelling Unit shall mean and refer to any building or structure or portion of any building or structure situated upon a Lot which is intended for use and occupancy as an attached or detached residence for a single family.

21. Eligible Insurer shall mean and refer to an insurer or governmental guarantor of a mortgage or trust deed who has requested notice in writing of certain matters from the Association in accordance with this Declaration.

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

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

24. Exterior Materials shall mean and refer to stone, rock, stucco, wood siding, finished lumber, brick, or other similar materials but shall not mean cinder block or concrete block or aluminum or vinyl siding. Exterior residence materials shall be of a noncombustible material as approved by the City. The determination whether any specific material constitutes an acceptable Exterior Material shall be made by Management Committee or its designee.

25. Family shall mean and refer to a group of natural persons related by blood, adoption or marriage, or up to three (3) unrelated persons residing in the same Dwelling Unit and maintaining a common household.

26. Guest shall mean and refer to a visitor, invitee or person whose temporary presence

within the Project is approved by or is at the request of a particular resident.

27. Improvement shall mean and refer to every structure and all appurtenances thereto of every type and kind, including but not limited to the Buildings, roads, driveways, fences, landscaping, hedges, windbreak, plantings, trees and shrubs, pipes, lines, meters, towers, and other facilities used in connection with water, sewer, gas, electric, or other utilities.

28. Land shall mean and refer to all of the real property within the Project and subject to this Declaration.

29. Lot shall mean and refer to a portion of the Property, other than the Common Area, intended for any type of independent ownership and use as may be set out in this Declaration and as shall be shown on the Plat Map filed with this Declaration or amendments thereto. Where the context indicates or requires, the term Lot includes any dwelling or living unit, physical structure or improvement constructed on the Lot.

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

31. Majority shall mean and refer to those eligible votes of Owners or other groups as the context may indicate totaling more than fifty (50.01%) percent of the total eligible number.

32. Management Committee shall mean and refer to those Lot Owners (or the legal agents of institutional Lot Owners) duly elected and qualified to manage, operate and regulate the Association.

33. Manager shall mean and refer to the person or entity appointed or hired to manage and operate the Project.

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

35. Maximum Number of Residential Lots shall mean and refer to the maximum number of residential Lots approved for development within this Project under the Master Plan, as amended from time to time. The Maximum number of Lots contemplated by the Declarant as of the date of this Declaration for the entire Project is 75.

36. Member shall mean and refer to an Owner who, by virtue of his ownership of a Lot in the Project, is considered a shareholder in the Association. In addition and where the context so requires the term Member may mean and refer to a participant in a particular group, such as a Member of a Subcommittee.

37. Mortgage shall mean and refer exclusively to either a first mortgage or first deed of

trust on any Lot.

38. Mortgagee shall mean and refer exclusively to a mortgagee under either a first mortgage or a beneficiary under a first deed of trust on any Lot.

39. Office of the County Recorder shall mean and refer to the Office of the County Recorder of Salt Lake County, Utah.

40. Owner shall mean and refer to (a) the Person(s), including without limitation the Declarant, holding an aggregate fee simple interest in a Lot. The term Owner does not mean or include a mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

41. Period of Declarant's Control shall mean and refer to a period of time commencing on the date this Declaration is recorded and terminating on the occurrence of the earliest of the following events: (a) not less than 120 days after 100% of the Units have been conveyed or (b) the Declarant executes and records a written Waiver of its right to control.

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

43. Plans and Specifications shall mean and refer to any and all documents designed to guide or control the construction of an Improvement, or alterations, modifications, changes, additions and the like thereto, including without limitation all documents indicating the size, shape, configuration and/or materials, to be incorporated; all site plans, excavation and grading plans, elevation drawings, floor plans, techniques, samples of exterior colors, plans for utility services, and all other documentation or information relevant to the improvement or proposal in question.

44. Plat Map shall mean and refer to the "Plat Map or Maps of Baywood Village" on file in the office of the County Recorder of Salt Lake County, as they may be amended or supplemented from time to time. The Plat Map will show the location of the Lots and Common Area.

45. Private Way or Private Drive shall mean and refer to those ways, drives or turnabouts within the Project not dedicated to any city, county, state or other governmental body politic, entity or agency.

46. Private Yard Area shall mean and refer to the private yard area within a Lot to the rear or in back of or behind the Dwelling Unit.

47. Project shall mean and refer to the Baywood Village, a Utah planned unit development.

48. Project Documents shall mean collectively the documents governing the Project,

including but not limited to the Declaration, By Laws, Rules and Regulations, and Articles of Incorporation.

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

50. Record, Recorded and Recordation shall mean and refer, with respect to any document, the recordation of such document in the Office of the County Recorder of Salt Lake County, Utah.

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

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

53. Single Family Home or Residence shall mean and refer to both the architectural style of a home and the nature of the residential use thereof or activity permitted therein.

54. State shall mean and refer to the State of Utah.

55. Subdivision shall mean and refer to a parcel of land, which has been shown on a final and recorded subdivision plat consisting of two (2) or more Lots.

56. Total Votes shall mean and refer to the total number of available votes in the Project or where the context so requires, the total number of available votes within the Project.

57. Baywood Village at Kimball's Lane Townhomes shall mean and refer to Baywood Village at Kimball's Lane Townhomes, a Utah planned unit development.

58. Use Restrictions shall mean and refer to the initial use restrictions set forth herein, as they may be supplemented, expanded, modified, amended, repealed, withdrawn or canceled from time to time.

59. Voting Group shall mean one or more Neighborhoods comprised of Owners who vote on a common slate for election of Members of the Management Committee.

60. **Visible From a Neighboring Property** shall mean with respect to any object, that such object is or would be visible to an individual 6' tall, standing at ground level on any portion of the neighboring property.

## II. SUBMISSION

The Land, described with particularity on Exhibit "A" attached hereto and incorporated herein by this reference is hereby submitted to the terms, covenants and conditions of, is hereby made subject to, and shall be governed and regulated by, this Declaration. In addition:

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

ALL OF THE FOREGOING IS SUBJECT TO: All liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all Patent reservation and exclusions; any mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described Tract or any portion thereof, including, without limitation, any mortgage or deed of trust; all visible and necessary easements and rights-of-way; all easements and rights-of-way of record; any easements, rights of-way, encroachments, or discrepancies shown on or revealed by the Plat Maps or otherwise existing; an easement for each and every common area improvement, equipment, pipes, lines, cables, wires, utility systems, or similar facilities which traverse or partially occupy the above-described Tract; and all easements upon, over, across, under or through the Property and Buildings, whether or not shown on the Plat Map necessary or convenient for servicing, repairing, accessing, ingress to, egress from, maintenance and replacement of all common elements and common area improvements, including by way of illustration but not limitation all equipment, pipes, lines, cables, wires, gas, power and other utility systems, and similar facilities or services.

## III. COVENANTS, CONDITIONS, AND RESTRICTIONS

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

1. Description of Improvements. The significant improvements in the Project include, or shall include, 75 Lots which shall be contained in one of the 26 Buildings. There shall be 23 triplex buildings and 3 duplex buildings. Each Building shall have a full basement and private driveways. Gas and electric utilities will be located at the end of each Building. Servicing the Project will be an on-site detention basin and sub-surface drain system which shall be owned and maintained by the Association, private road or roads, sidewalks, perimeter fencing, entry and monument. There will be play areas or tot lots. There will be gazebo and or picnic areas. The Project will also contain other improvements of a less significant nature.



2. Description and Legal Status of the Property. The Lots shall be individually owned and the Common Area shall be owned in common or by the Association.

3. Membership in the Association. Membership in the Association is appurtenant to the ownership of a Lot, and may not be partitioned therefrom.

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

All of LOT NO. \_\_\_\_\_ contained within Baywood Village at Kimball's Lane Townhomes, a Utah planned unit development, as the same is identified in the Record of Plat Map recorded in Salt Lake County, Utah as Entry No. \_\_\_\_\_, in Book \_\_\_\_\_, at Page \_\_\_\_\_ (as said Record of Plat Map may have heretofore been amended or supplemented) and Baywood Village, as the same is identified in the Record of Plat Map recorded in Salt Lake County, Utah as Entry No. \_\_\_\_\_, in Book \_\_\_\_\_, at Page \_\_\_\_\_ (as said Plat Map may have heretofore been amended or supplemented), together with an appurtenant undivided ownership interest in the Common Areas and Facilities and the Association.

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

5. Use Restrictions.

a) Plan of Development: Applicability: Effect. Declarant has established a general plan of development for the Project as a master planned community in order to protect all Owners' quality of life and collective interests, the aesthetics and environment within the Project and the vitality of and sense of community within the Project, all subject to the Management Committee's and the Members' ability to respond to changes in circumstances, conditions, needs, and desires within Baywood Village at Kimball's Lane Townhomes, The Project is subject to the land development, architectural, and design provisions described herein, the other provisions of this Declaration governing individual conduct, and uses of or actions upon the Project, and the guidelines, rules, and restrictions promulgated pursuant hereto, as each may be amended from time to time, all of which establish affirmative and negative covenants, easements, and restrictions on the Project. Except as otherwise expressly provided herein, all provisions of this Declaration and any rules shall apply to all Owners, occupants, tenants, guests, and invitees of any Lot. Any lease on any Lot shall provide that the lessee and all occupants of the leased Lot shall be bound by the terms of

b) Authority to Promulgate Use Restrictions and Rules. (a) Subject to the terms of this section and in accordance with its duty of care and undivided loyalty to the Association and its Members, the Management Committee may amend the Use Restrictions and may adopt rules which modify, cancel, limit, create exceptions to, or expand the Use Restrictions then in effect. The Association shall provide, without cost, a copy of the Use Restrictions and rules then in effect to any requesting Member or Mortgagee. Nothing in this section shall authorize the Management Committee or the Members to amend, repeal, or expand the Declaration, the By-Laws or the Articles. Such documents may be amended only as and in the manner provided therein.

c) Owners' Acknowledgment. All Owners are subject to the Use Restrictions and are given notice that (1) their ability to use their privately owned property is limited thereby, (2) the Management Committee and/or the Members may amend the Use Restrictions or adopt rules which modify, cancel, limit, create exceptions to, or expand the Use, and (3) the Declarant may unilaterally amend the Use Restrictions or other portions of this Declaration during the Period of Declarant's Control. Each Owner by acceptance of a deed acknowledges and agrees that the use and enjoyment and marketability of his or her property can be affected by this provision and that the Use Restrictions and rules may change from time to time.

d) Rights of Owners. Except as may be specifically set forth in the Initial Use Restrictions, neither the Management Committee nor the Members may adopt any rule in violation of the following provisions:

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

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

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

4) Activities Within Dwelling Units. No rule shall interfere with the activities carried on within the confines of Dwelling Units, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Dwelling Units, that generate excessive noise or

traffic, that create unsightly conditions visible from outside the Dwelling Unit, or that create an unreasonable sounds of annoyance.

5) Allocation of Burdens and Benefits. No rule shall alter the basis for allocation of financial burdens among various Lots or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the use of the Common Area, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who abuse the Common Area, violate rules or this Declaration, or fail to pay assessments. This provision does not affect the right to increase the amount of Assessments.

6) Alienation. No rule shall create an unreasonable restraint on the alienation of property; provided, however, the leasing restrictions set forth below shall not be considered a unreasonable restraint.

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

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

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

10) Title to the Common Area. The Common Area, described with particularity in Exhibit "D" which is attached hereto and incorporated herein by this reference, shall be owned by the Association.

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

12) Joint or Common Utility Easements with Neighboring Subdivisions, Project or Developments. The Declarant, for itself and its successors in interest (including but not

limited to the Association), hereby reserves the irrevocable and exclusive right, without any additional consent required, to enter into easement agreements with or to convey to the owners or developers of adjoining subdivisions, projects or developments any and all reasonable and necessary utility easements or rights of way for gas, water, power, sewer, storm drain systems or the like under, over, across or through the Project and the off-site detention basin.

13) Member's Easements and Rights of Way. Every Member of the Association shall as an Owner have the right and non-exclusive easement to use and enjoy the Common Area. Such right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following restrictions: (a) The right of the Association to limit the number of guests and residents; (b) The right of the Association to suspend the voting privilege; and (c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for the purpose of regulating transportation, maintaining the roadways or providing utilities and other similar or related purposes. During the Developer's period of development of the Project, any such dedication or transfer shall be effective only if approved in writing by the Declarant.

14) Rules and Regulations. The Management Committee, shall have the power and authority to adopt, amend or repeal administrative and house rules and regulations, and architectural guidelines, from time to time.

15) Prohibited Activities. The following activities are prohibited within the Property unless expressly authorized by, and them subject to such conditions as may be imposed by, the Management Committee:

(a) Posting of signs of any kind, including posters, circulars, campaign signs, political signs, signs "For Rent" or "For Sale," and bills on any Lot, Common Area, or right-of-way, except those required by law, expressly allowed by the Declaration or authorized in writing by the Management Committee;

(b) Subdivision of a Lot into two or more Lots after a subdivision plat including such Lot has been approved and filed with the appropriate governmental authority, or changing the boundary lines of any Lot, except that the Declarant and Builders, with Declarant's consent, shall be permitted to subdivide or change the boundary lines of Lots which they own;

(c) Operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Dwelling Unit rotates among participants in the program on a fixed or floating time schedule over a period of years, except that Declarant and its assigns may operate such a program with respect to Dwelling Units which it owns;

(d) Occupancy of a Dwelling Unit by more than two persons per bedroom in a Dwelling Unit;

(e) Capturing, trapping or killing wildlife within the Property, except (1) in circumstances posing an imminent threat to the safety of persons or pets using the Property; (2) when authorized and supervised by the Management Committee in accordance with a game management program and with the Consent of the Declarant as long as it owns any Property which it owns; or (3) the Declarant shall have the right to remove water fowl from any golf course;

(f) Activities which materially disturb or destroy the vegetation, wildlife, or air quality within the Property or which result in unreasonable levels of sound or light pollution;

(g) Disposal of any oil, gas, or lubricants, and the storage or disposal of other hazardous materials (as may be determined in the Management Committee's reasonable discretion and as defined by applicable law) anywhere within the Property;

(h) Parking of any vehicle (including, but not limited to, any car, truck, motorcycle, boat, or trailer) containing or displaying a "for sale" sign, or other indication of being "for sale," in any driveway or other portion of any Lot, or on any street or any portion of the Common Area; and

(i) No electronic or radio transmitter of any kind, other than garage door openers, shall be located or operated in or on any Improvement or on any Lot without the prior written consent of the Association or Management Committee.

(j) No garage, patio, porch or lawn sale shall be held on any Lot, except that an Owner may conduct such a sale if the items sold are only his own furniture, furnishings and belongings, not acquired for purposes of resale, if such sale is held at such time and in such manner as not to disturb any other resident and if such sale is held it must be held in full compliance with all applicable governmental ordinances, statutes, laws, rules, regulations and resolutions.

(k) Behavior which causes erosion or unreasonable amounts of dust or pollen.

16) Prohibited Conditions. The following conditions shall be prohibited within the Project:

(a) Dog runs, animal pens, walls or fences of any kind on any Lot except as approved by the Management Committee in writing;

(b) Garage doors shall remain closed at all times except when entering and exiting the garage;

(c) Detached garages;

(d) Excessive exterior lighting on any Lot, including lighting which causes unreasonable glare, unless necessary for public safety purposes on, or lighting of Private Amenities or Common Area. The Management Committee shall in its sole discretion determine whether any exterior lighting is excessive;

(e) Temporary or permanent storage buildings or sheds, whether prefabricated, metal or of any other construction whatsoever, which are Visible From Neighboring Property. No furniture, fixtures, firewood, appliances, machinery, equipment, or other goods or chattels which are not in active use shall be stored in any building or any Lot or Common Area in such a manner as to be Visible from Neighboring Property; provided, however, this restriction shall not apply to the property of the Association, the Declarant, or any Builder (to the extent approved by the Declarant). Notwithstanding the foregoing, an Owner may be permitted to construct or place a gazebo, pergola, or similar structure within the rear yard of a Lot if in conformance with the Design Guidelines and all applicable zoning ordinances and otherwise approved by the Management Committee in writing;

(f) Outdoor playground equipment (except within any Common Area); and

(g) Designs in landscaping softscape or hardscape that appear unnatural or cause a distraction or are otherwise limited or prohibited by the City; (e.g., words, initials, or images). All landscaping shall be maintained in accordance with the Community Standard and City ordinance.

Without limiting the generality of any of the foregoing provisions, the Management Committee shall be permitted to establish and enforce reasonable restrictions and guidelines with respect to noise levels originating from a Lot and with respect to the placement and use of noise making apparatus on any Lot. No activities shall be conducted upon or adjacent to any Lot or within improvements constructed thereon which are or might be unsafe or hazardous to any Person or property. No open fires shall be lighted or permitted on the Property, except in a contained outdoor fireplace or barbecue unit while attended and in use for cooking purposes or within a safe and well designed interior fireplace. No odors shall be permitted to arise or emit from any Lot, which are offensive or detrimental to any neighboring property, as determined in the discretion of the Management Committee.

Normal construction activities and parking in connection with the building of improvements on a Lot shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots shall be kept in a neat and tidy condition during construction consistent with the Community Wide Standard. During construction periods, trash and debris shall not be permitted to accumulate and shall be removed or placed in appropriate trash containers on a daily basis. Supplies of brick, block, lumber and other building materials shall be piled only in such areas as may be approved by the

Management Committee. In addition, any construction equipment and building materials stored or kept on any Lot during construction of improvements may be kept only in areas approved by the Management Committee, which may also require screening of the storage areas, The Declarant, for so long as it owns any property in the Project, and, thereafter, the Management Committee, in its sole discretion) shall have the right to determine the existence of any such nuisance.

17) Diseases and Insects. Owners shall not permit any thing or condition to exist upon any Lot that is likely to induce, breed, or harbor infectious plant diseases or noxious insects.

18) Overhead Encroachments. No tree, shrub, or planting of any kind on any Lot shall be allowed to overhang or otherwise encroach upon any sidewalk, street, pedestrian pathway, golf cart path, or other area from ground level to a height of eight feet (8') without prior approval of the Management Committee.

19) Swimming Pools. In addition to any requirements set forth by the Declarant or the Management Committee, no swimming pool, spa, pond, or other man-made body of water may be constructed, installed, or maintained on any Lot in violation of any applicable local government pool ordinances, including, but not limited to, the Salt Lake County Swimming Pool and Protective Enclosure criteria. This shall include compliance with any requirements as to the construction and maintenance of walls or fences.

20) Parties Bound. The Project Documents shall be binding upon all Owners and residents, their family members, guests and invitees by virtue of their accepting a deed or other document of conveyance, or possession of, or entering upon a Lot or the Project.

21) Nuisance. It shall be the responsibility of each Owner and resident to prevent the creation or maintenance of a nuisance in, on or about the Project. For purposes of this section a "nuisance" includes but is not limited to the following:

- a) The development of any unclean, unhealthy, unsightly, or unkempt condition on, in or about a Lot or the Common Areas;
- b) The storage of any item, property or thing that will cause any Lot or the Common Area to appear to be in an unclean or untidy condition or that will be noxious to the senses;
- c) The storage of any substance, thing or material upon any Lot or in the Common Areas that will emit any foul, unpleasant or noxious odors, or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the other residents at the Project;
- d) The creation or maintenance of any noxious or offensive condition or activity in or about any Lot or the Common Areas;

e) Actions or activities tending to cause embarrassment, discomfort, annoyance, distress or a disturbance to any other residents, their guests or invitees, particularly if the police or sheriff must be called to restore order;

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

g) Creating or allowing unreasonable noise in, on or about any Lot or the Common Area, especially after hours established by the Management Committee.; and

h) Creating or allowing unreasonable short visit traffic in, on or about any Lot or the Common Area, especially after hours established by the Management Committee; and

i) Allowing a party house as that term is defined in U.C.A., Section 78-38-9 (1999) as it may be amended from time to time.

22) Unsightly Work and Hobbies. The pursuit of hobbies or other activities, including but not limited to the assembly and disassembly of motor vehicles and other mechanical devices which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Project.

23) Removing Garbage, Dust and Debris. No rubbish, trash, refuse, waste, dust, debris or garbage (hereinafter the "garbage") shall be allowed to accumulate so as to become a nuisance. During the week, all garbage shall be placed into plastic bags or other acceptable receptacles and deposited into designated garbage cans or dumpsters; individual garbage cans shall not be placed or stored so as to be visible from the street, other Dwelling Units or the Common Area except on garbage pick-up day; and on garbage pick-up days, garbage cans shall not be left out in the designated garbage can pick-up area for a period longer than twenty-four (24) consecutive hours.

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

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

26) Temporary Structures. No Owner or resident shall place upon any part of the Project any temporary structures including but not limited to tents, trailers, or sheds, without the



prior written consent of the Committee. Anything to the contrary notwithstanding and until the occurrence of the Events referred to herein, the Developer may install and use temporary structures in the development of the Project and marketing of the Lots or Dwelling Units.

27) Parking Pads. No parking pads (e.g., cement, concrete, asphalt or of any other material) may be constructed for recreational, commercial or oversized vehicles of any kind.

28) Trees, Shrubs and Bushes; Maintenance of Proper Sight Distance at Intersections. The property located at or near driveways, entrances, exits, walkways, paths and street intersections or corners shall be landscaped so as to remove any obstructions and to permit safe sight. No fence, wall, hedge, shrub, bush, tree or monument, real or artificial, shall be planted or placed by any Owner or resident in, on or about the Common Areas without the prior written consent of the Management Committee. The Management Committee may alter or remove any objects planted or placed in violation of this subsection.

29) Energy Conservation Equipment. No solar energy collector panels, other energy conservation equipment or attendant hardware shall be constructed or installed on the Project without the prior written consent of the Committee, unless allowed by local, state or federal law.

30) Business Use. No commercial trade or business may be conducted in or from a Lot or Dwelling Unit unless (a) written approval of the proposed business activity is granted by the Management Committee prior to the commencement of operations; (b) the business activity conforms to all home occupation and zoning requirements governing the Project; (b) the operator has a city issued business license; and (c) the business activity satisfies the Home Occupation Guidelines adopted by the Management Committee, as they may be modified from time to time. No resident may operate a commercial trade or business in or from his Lot with employees of any kind. All inventory, which may not exceed 250 cubic feet, must be contained within the Dwelling Unit. Notwithstanding the foregoing, the leasing of a Lot shall not be considered a trade or business within the meaning of this subsection.

31) Garages; Storage and Parking of Motor Vehicles. Each Dwelling Unit constructed upon a Lot shall contain a garage. The driving, parking, standing and storing of motor vehicles in, on or about the Project shall be subject to the following:

a) Any traffic and parking rules and regulations as may be adopted by the Management Committee from time to time;

b) Except for purposes of loading or unloading passengers or supplies (for a period of time not to exceed twenty-four (24) hours), no recreational, commercial or oversized vehicle parking is allowed anywhere in the Project (other than any RV Parking Area constructed by the Declarant, although Declarant is not promising or obligated to do so hereby) at any time or for any reason. Recreational, commercial and oversized motor vehicles must be parked or stored in the RV Parking Area or outside of the Project;

- c) No parking is allowed on the streets within the Project;
- d) No motor vehicle or trailer, including but not limited to any car, automobile, truck, van, minivan, or any other transportation device of any kind may be parked or stationed in such a manner so as to block access to any Lot, structure, building, or driveway, or so as to create an obstacle or potentially dangerous condition;
- e) Residents may only park their motor vehicles within their garages or driveways.
- f) No resident shall repair or restore any vehicle of any kind in, on or about any Lot or the Common Area, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility.
- g) Since the garages must be used primarily for the parking and storage of vehicles, no garage may be altered in such a manner that the number of motor vehicles which may reasonably be parked therein after the alteration is less than the number of motor vehicles that could have been reasonably parked in the garage as originally designed and constructed. Garage doors shall remain closed except when the garage is in use.
- h) Excess, open and unassigned parking spaces or stalls, which are limited, are for the use and benefit of visitors, guests and invitees, and are not to be used by Lot Owners or Residents without the prior written consent of the Management Committee.
- i) By driving a motor vehicle into the Project, each vehicle owner and driver is deemed to have consented to be bound by and subject to this section.
- j) A motor vehicle parked in violation of this Declaration may be impounded or towed by the Management Committee, without further notice, and at the Owner's sole risk and expense.

32) Satellite Dishes, Antenna and Aerials. Satellite dishes, antenna and aerials shall be allowed as authorized by the FCC, although to the extent possible each Owner shall follow the guidelines adopted by the Management Committee.

33) Windows and Window Coverings. No sun shades, tinted windows, aluminum foil, newspapers, reflective film coatings, or any other similar materials may be used to cover the exterior windows of any Dwelling Unit or garage. All windows and window panes in the Project shall be harmonious, and comparable in size, design and quality, so as not to detract from uniformity in appearance and construction.

34) Pets. No pets, animals, livestock or poultry of any kind shall be bred in, on or

about the Project. Up to two (2) domestic pets per unit are allowed; provided, however, pets must be properly licensed and registered (if required) with the appropriate governmental agencies, owners must pay the pet deposit to the Management Committee, obtain a certificate of registration from the Association, and abide by all pet rules and regulations adopted by the Management Committee from time to time and local ordinances. Pets may not create a nuisance. The following acts of an animal may constitute a nuisance: (a) it causes damage to the property of anyone other than its owner; (b) it causes unreasonable fouling of the air by odors; (c) it causes unsanitary conditions; (d) it defecates on any common area and the feces are not immediately cleaned up by the responsible party; (e) it barks, whines or howls, or makes other disturbing noises in an excessive, continuous or untimely fashion; (f) it molests or harasses passersby by lunging at them or chasing passing vehicles; (g) it attacks people or other domestic animals; (h) it otherwise acts so as to bother, annoy or disturb other reasonable residents or interferes with their right to the peaceful and quiet enjoyment of their property; or (i) by virtue of the number of pets maintained, they are offensive or dangerous to the health, welfare or safety of other residents. Pets in the common area must be in a cage or on a leash and under the control of a responsible person.

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

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

37) Damage or Waste. No damage to, or waste of, the Common Area shall be committed by any Owner or any invitee of any Owner, and each Owner shall indemnify and hold the Management Committee and the other Owners harmless against all loss resulting from any such damage or waste caused by that Owner or an invitee; provided, however, that any invitee of the Declarant shall not under any circumstances be deemed to be an invitee or any other Owner.

38) Structural Alterations. No structural alterations to the Common Area or Facilities are allowed without the prior written consent of the Management Committee.

39) BBQ, Patio Table and Chairs. Outdoor table(s) and chair(s) and BBQ grill(s) or equipment are allowed outside, provided they are located exclusively within the confines of the Dwelling Unit's cement pad or patio and are maintained in a clean, tidy and neat manner. Each Owner or resident shall use his best efforts to keep such personal property so it is not visible from the street, the Common Area or another Lot. Bicycles, tricycles, motorcycles, household furniture and furnishings, equipment, machinery, tools, supplies, boxes, storage containers or other items of personal property may not be stored in, on or about the cement pad, patio or deck area, in the Limited Common Area, or in any manner so as to be visible from the Common Area, street or another Lot.

6. Leases. No Owner shall be permitted to lease his Lot for short term, transient, hotel, seasonal or corporate purposes, which shall be deemed to be any lease with an initial term of less one (1) year. Daily or weekly rentals are prohibited. No Owner may lease individual rooms to separate persons or less than his entire Dwelling Unit. With the affirmative written consent of at least 2/3rds of the Owners, this section may be amended to prohibit rentals either in whole or in part.

In order for the Association to: protect the equity of the individual Owners, carry out the purpose for which the Project was formed by preserving the character of the Project as a homogeneous residential community of predominantly owner-occupied Lots and by preventing the Project from assuming the character of an apartment, renter-occupied complex, and comply with the eligibility, requirements for financing in the secondary mortgage market insofar as such criteria provide that the project be substantially owner-occupied, leasing of a Lot or Lots shall be prohibited, except in the case of undue hardship as provided below. The Management Committee shall be empowered to allow up to twenty (20%) percent of the Lots in the Project to be leased or occupied by non-owner residents. Any Owner who intends to lease his Lot shall submit a written application to the Management Committee requesting permission to do so, which consent shall not be unreasonably withheld so long as at least eighty (80%) percent of the Lots in the Project are owner occupied. No Lot may be leased without the prior written consent of the Management Committee. The term "owner-occupied" shall mean a Lot occupied by one of the following: (1) the vested owner (as shown on the records of the Salt Lake County Recorder), (2) the vested owner and/or his spouse, children or parents, (3) the shareholder, partner, member, trustor, beneficiary or other legal representative of an institutional owner (provided, such person holds a beneficial interest in such legal entity of at least 50.0%) and/or his spouse, children or parents. The Management Committee, in its sole discretion, shall be empowered to allow reasonable leasing of Lots beyond the percentage limitation set forth above upon written application to avoid undue hardship on an Owner. By way of illustration and not by limitations, examples of circumstances which would constitute undue hardship are those in which: a) an Owner must relocate his residence and cannot, within ninety (90) days from the date the Lot was placed on the market, sell the Lot while offering it for sale at a reasonable price no greater than its current appraised market value; b) the Owner dies and the Lot is being administered by his estate; c) the Owner takes a leave of absence or temporarily relocates and intends to return to reside in the Lot; (d) the Lot is to be leased to a member of the Owner's immediate family, which shall be deemed to encompass children, grandchildren, grandparents, brothers, sisters, parents, and spouses. Those Owners who have demonstrated that the inability to lease their Lot would result in undue hardship and have obtained the requisite approval of the Management Committee may lease their Lots for such duration as the Management Committee reasonably determines is necessary to prevent undue hardship. Any Owner who believes that he must lease his Lot to avoid undue hardship shall submit a written application to the Management Committee setting forth the circumstances necessitating the leasing, a copy of the proposed lease, and such other information as the Management Committee may reasonably require. Leasing in the case of undue hardship shall be permitted only upon the Management Committee's written approval of the Owner's application. When a lease is approved, a copy of the lease, signed by the lessee and lessor, shall be submitted to the Management Committee within ten (10) days after it has been signed by both parties. The Management Committee shall have the power to make and enforce reasonable

rules and regulations and to fine, in accordance with the Declaration and By-Laws, in order to enforce the provisions of this subparagraph. Any transaction which does not comply with this Section shall be voidable at the option of the Management Committee. No rule shall prohibit the leasing or transferring of any Lot, or require consent of the Association or Management Committee for leasing or transferring of any Lot; provided, the Association or the Management Committee may require a minimum lease term of up to six (6) months. The Association may require that Owners use lease forms approved by the Association (or include specific terms in their leases), and may impose a review or administration fee on the lease or transfer of any Lot. Other than as expressly stated herein, there is no restriction on the right of any Owner to lease or otherwise grant occupancy rights to a Lot.

7. Easements: Drainage, Support, Maintenance and Repair. The following easements and rights of way are hereby RESERVED for and GRANTED to the Association:

a) Easements of Encroachment. Declarant reserves unto itself, so long as it owns any property in the Project, easements of encroachment and for maintenance and use of any permitted encroachment, between each Lot, Building and any adjacent Common Area, and between adjacent Lots or Buildings due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon.

b) Easements for Utilities. Declarant reserves unto itself, so long as it owns any property in the Project, and grants to the Association an easement for the purpose of access and maintenance upon, above, across, over, under and through all of the Property and Buildings to the extent reasonably necessary to install, replace, repair, and maintain cable television, satellite or other antenna systems, telephone, security and similar systems, roads, walkways, bicycle pathways, trails, drainage systems, street lights and signage. The Declarant and/or the Association may assign these rights to any local utility supplier, cable or satellite television company, security company or other entity providing a service or utility to the Project or any structure located therein, subject to the express limitations herein. This easement shall entitle the holders to access, service, maintain, construct or install any of the foregoing systems, facilities, or utilities upon, across, over, under or through any existing Building, Lot or Dwelling Unit, provided any damage resulting from the exercise of this easement shall promptly be repaired by, and at the expense of the Person exercising the right or power granted by the easement. Declarant specifically grants to the local utility suppliers easements upon, over, under, through or across the Project, and any Building, Lot, or Dwelling Unit for ingress, egress, installation, reading, replacing, repairing, and maintaining utility meters and boxes. The exercise of this easement by any party other than the Association shall be subject to prior notice to the Association, which shall be permitted to coordinate and supervise access to the Project by the grantee of the easement. The exercise of the easement also shall not unreasonably interfere with the use of any Building, Lot or Dwelling Unit and, except in an emergency, and entry into any Building, Lot or Dwelling Unit shall be made only after reasonable notice to the Association and the Owner or occupant.

c) Easements to Serve Additional Property. The Declarant hereby reserves for itself and its duly authorized agents, representatives, employees, successors, assigns, licensees, and

Mortgagees, an easement over the off-site detention basin for purposes of maintenance, egress and ingress, and all other Common Area and Facilities for the purposes of enjoyment, use, maintenance, access, and development of Declarant's property, whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of access and ingress and egress over the Common Area and any Building, Lot or Dwelling Unit for construction of roads and for connecting, installing and servicing utilities on such property. Declarant agrees that it and its assigns shall be responsible for any damage caused to the Property as a result of vehicular traffic connected with development of such Property.

d) Easements for Cross-Drainage. Every Lot and the Common Area, including the off-site detention basin, shall be burdened with easements for natural drainage of storm water runoff from other portions of the Project; provided, no Person shall alter the natural drainage on any Building or Lot to increase materially the drainage of storm water onto adjacent portions of the Project without the consent of the Owner(s) of the affected property, the Management Committee, and the Declarant as long as it owns any property in the Project.

e) Risk of Entry. The Association shall have the right, but not the obligation, and a perpetual easement is hereby granted to the Association, to enter all portions of the Project, including the off-site detention basin, each Building, Lot and Dwelling Unit, for emergency, security, and safety reasons. Such right may be exercised by the authorized agents of the Association, its Management Committee, Manager, officers, or committees, and by all police officers, fire fighters, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in emergencies, entry into a Building, Lot or Dwelling Unit shall be only during reasonable hours and after notice to and permission from the Owner thereof. This easement includes the right to enter any Building, Lot or Dwelling Unit to cure any condition which increases the risk of fire or other hazard if an Owner fails or refuses to cure the condition within a reasonable time after request by the Management Committee, but does not authorize entry into any Lot or Dwelling Unit without permission of the Owner, except by emergency personnel acting in their official capacities, which permission shall not be unreasonably withheld, conditioned or delayed.

f) Easements for Maintenance and Enforcement. Authorized agents of the Association shall have the right, and a perpetual easement is hereby granted to the Association, to enter all portions of the Project, including the off-site detention basin and all other Common Areas and Facilities, each Building, Lot or Dwelling Unit to (a) perform its maintenance responsibilities, and (a) make inspections to ensure compliance with this Declaration, any Supplemental Declaration, By-Laws, and Rules. Except in emergencies, entry into a Lot or Dwelling Unit shall be only during reasonable hours and after notice to and permission from the Owner, which permission shall not be unreasonably withheld, conditioned or delayed. This easement shall be exercised with a minimum of interference to the quiet enjoyment to Owners' property and any damage shall be repaired by the Association at its expense. The Association also may enter a Lot or Dwelling Unit to abate or remove, using such measures as may be reasonably necessary, any structure, thing or condition which violates the Declaration, any Supplemental Declaration, the By-Laws, or the Rules. All costs incurred, including reasonable attorneys' fees, shall be assessed against the violator as an Additional

Charge.

8. Liability of Owners and Residents For Damages. Any Owner or resident shall be liable to the Association or other Owners or Residents for damages to person or property in the Community caused by his negligence.

9. Encroachments. In the event that any portion of the Common Area, a Lot, Building or Dwelling Unit encroaches or comes to encroach upon other Common Area or another Lot, Building or Dwelling Unit as a result of construction, reconstruction, repair, shifting, settling, or movement, an easement for such encroachment is created hereby and shall exist so long as such encroachment exists.

10. Management Committee. The Association shall be managed by a Management Committee which shall be comprised of three (3) members. Until the termination of the Period of Declarant's Control, the Declarant shall have the exclusive and irrevocable right to appoint all of the Members of the Committee and their successors or replacements.

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

a) To Enter. The power and authority to enter into or upon any Lot to make repairs and to do other work reasonably necessary for the proper maintenance and operation of the Project. Except in the case of an emergency, reasonable notice shall be given to the residents.

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

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

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

e) Enter Into Contracts. The authority to enter into contracts which in any way

concern the Project, so long as any vote or consent necessitated by the subject matter of the agreement has been obtained.

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

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

h) To Add Property. The power and authority to add any real property, or interest therein, obtained pursuant to subparagraph (g) above to the Project, so long as it has been approved by at least Seventy five (75%) of the members in the Association.

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

j) Meetings. The authority to establish rules of order and decorum for all meetings of the Association and Management Committee.

k) Assignment or Leasing of Open Common Area Parking Spaces. It is intended that the Common Area parking spaces are for the exclusive use of guests and visitors; however, if in the sole opinion of the Management Committee, whose decision shall be binding and conclusive, there are excess guest or visitor parking spaces in the Common Area, then the Committee may elect to temporarily assign or lease any excess Common Area parking spaces to residents.

l) Borrow Money. The power and authority to borrow money and pledge assets of the Association, so long as it has been approved by at least Seventy five (75%) of the members in the Association.

m) Right to Rent, Lease or Make Available. The right of the Association to rent, lease, or make available without charge for any purpose (including, without limitation, public meetings of governmental authorities) any portion of any community center and other recreational facilities within the Common Area on a short-term basis to any Person approved by the Association for the exclusive use of such Person and such Person's family, guests and/or invitees; and

n) Right to Use Amenities Subject to Valid Activity Card. The requirement that access to and use of recreational facilities within the Project shall be subject to the presentation of a valid Activity Card issued by the Association.



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

12. Delegation of Management Responsibilities. The Committee may delegate some of its management responsibilities to either a professional management company, an experienced on-site manager, independent contractors, through service contracts, or any combination thereof. The termination provision of any such contract must not require a termination penalty or any advance notice of more than ninety (90) days, no such contract shall be for a term greater than one (1) year.

13. Classes of Membership and Voting Allocations. The Association shall have two (2) classes of membership -- Class A and Class B, described more particularly as follows:

a) Class A. Class A Members shall be all Owners with the exception of the Class B Members, if any. The votes of Class A Members are subject to the following restrictions:

1) One Vote. Each Lot shall have one (1) vote based upon its undivided percentage of ownership interest;

2) Subject To Assessment. No vote shall be cast or counted for any Lot not subject to assessment;

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

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

5) Class B. Class B Member shall be the Declarant and any successor of Declarant who takes title for the purpose of development and sale of Lots, and who is designated as such in a recorded instrument executed by Declarant. The Class B Member shall originally be entitled to three (3) votes per Lot owned or one more vote than the Class A votes combined, whichever is greater. The Class B membership and the period of the Class B Member control shall terminate, and Class B membership shall convert to Class A membership upon the termination of the Period of Declarant's Control, to wit, at such time as:

a) Lots Sold. Four (4) months after seventy five percent (75%) of the Dwelling Units (constructed upon the Lots) have been sold; or

Declaration; or

- b) Five Years. Five (5) years from the effective date of this

- c) Election. When, in its sole discretion, Declarant so determines.

From and after the termination of the Period of Declarant's Control, the Class B Member shall be deemed to be a Class A Member entitled to one (1) vote for each Lot owned. At such time, the Declarant shall call a meeting, in the manner described in the By Laws of the Association for special meetings, to advise the membership of the termination of Class B status and, if it has not already occurred, to schedule transition of the operation and management of the entire Project to the Association.

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

15. Capital Improvements and Table. The Management Committee shall prepare a Table of Capital Improvements, which shall contain a list of foreseeable expenditures for capital improvements within the Area of Common Responsibility. The Table shall be included in every annual budget, and it shall be reviewed and updated at least annually, and reasonable reserve accounts shall be established by the Committee for the replacement of capital assets as they age. Expenditures by the Association for capital improvements to the Project shall be subject to and governed by the following:

- a) Committee Discretion/Expenditure Limit. Capital improvements to the Project which cost ten percent (10%) or less of the Total Annual Operations Budget and do not materially alter the nature of the Project, may be authorized by the Management Committee alone.

- b) Owner Approval/Expenditure Limit. Any capital improvement, the cost of which will exceed such amount, must, prior to the commencement of construction, be authorized by at least a majority of the Owners.

c) Owner Approval/Changing the Nature of the Project. Any capital improvement which would materially alter the nature of the Project must, regardless of its cost and prior to being constructed or accomplished, be authorized by at least sixty-seven (67%) of the undivided ownership interest in the Project.

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

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

18. Change of Use of Common Area. The Management Committee may change the use of any portion of the Common Area and construct, reconstruct, or change the buildings and other improvements thereon in any manner necessary to accommodate the new use of the Common Area. Any change in use of the Common Area shall be subject to approval by the Declarant as long as it owns a Lot.

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

20. Relationship with Tax-Exempt Organizations. The Association may create, enter into agreements or contracts with, grant exclusive and/or non-exclusive easements over the Common Area to, or transfer portions of the Common Area to non-profit, tax-exempt organizations, including, but not limited to, organizations that provide facilities and services designed to meet the physical and

social needs of older persons, for the benefit of the Project, the Association, its Members and residents. The Association may contribute money, real or personal property, or services to any such entity. Any such contribution shall be a Common Expense of the Association and shall be included as a line item in the Association's annual budget. For the purposes of this Section, a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code, as may be amended from time to time.

21. Compliance with Development Agreements. The development and operation of the Project is subject to various development agreements between and among Declarant and its affiliates, and various other developers and/or governmental agencies. The Association shall comply with all terms and conditions of the Development Agreements, as applicable, and shall accept responsibility for and shall comply with any obligations of the Declarant under the Development Agreements which are assigned to it by contract or law.

22. Operation, Maintenance and Alterations. The Lots and Common Area shall be maintained by the Lot Owners and the Association as follows:

23. Association's Responsibility. The Association shall maintain and keep in good repair the following (the "Area of Common Responsibility"):

- a) all Common Area;
- b) the roofs, foundations, structure and exterior of the Buildings;
- c) all landscaping and other flora, parks, signage, structures, parking areas, and improvements, including any bike and pedestrian pathways and trails, situated upon the Common Area;
- d) all water service facilities and drainage facilities within the Area of Common Responsibility, including lakes, ponds, and other water features;
- e) all arterial sidewalks and any sidewalks that are not the responsibility of any Owner or any local government entity;
- f) walls and fences constructed by the Declarant which serve as perimeter walls for the Project or which separate any Lot from Common Area whether or not located on a Lot; provided, the allocation of responsibility for the maintenance and repair of party walls and party fences;
- g) landscaping and irrigation systems, and signage within public streets and rights-of-way within or abutting the Project to the extent maintenance by any local government is not consistent with the Community Wide Standard, and any streetlights that are not included in a streetlight improvement district;

h) landscaping and other flora within any public utility easements and scenic easements within the Common Area (subject to the terms of any easement agreement relating thereto);

i) the off-site detention basin;

j) the front and side yards of the Lots;

k) any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, any Covenant to Share Costs, any plat of any portion of the Project, or any contract or agreement for maintenance thereof entered into by the Association;

l) any other item designated as a common responsibility or responsibility of the Association herein;

m) land drain improvements; and

n) any property and facilities owned by the Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members. Such property shall be identified by written notice from the Declarant to the Association. The Association's responsibility shall terminate at such time as Declarant revokes the privilege of use and enjoyment by written notice to the Association.

24. Owner's Responsibility. Each Owner shall maintain and keep in good repair the following (the "Area of Personal Responsibility"):

a) the rear yard area on his Lot;

b) his sidewalks and driveway;

c) the interior of his Dwelling Unit; and

d) all other individual improvements or utilities.

If an Owner fails in his maintenance responsibilities, the Association may, but shall not be obligated to, in addition to any other enforcement rights available, perform such maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner in accordance with the Declaration, and not be guilty of a trespass. The Association shall afford the Owner reasonable notice and an opportunity to cure any default prior to entry, except when entry is required due to an emergency situation that threatens imminent and substantial injury or harm to person or property.

25. Snow and Ice Accumulations. Snow and ice accumulations on the roads, streets and common areas shall be removed by the Association or its designee, unless that obligation is assumed by the City. Lot Owners shall remove all ice and snow accumulations on the sidewalks and driveways on their Lots unless a variance is granted by the Management Committee in writing.

26. Garbage Removal. The Association shall arrange for garbage pick up with the City or, in the alternative, contract privately for garbage removal. Each Owner shall make his garbage can or receptacle available for pick up on the designated day each week; however, trash receptacles may not be left so as to be visible from any street or drive for a period in excess of twenty-four (24) hours, and when not placed on the street or drive for pick up garbage cans or receptacles shall be located in a place not visible from the street, drive, common area or another Dwelling Unit.

27. Party Walls and Party Fences. Each wall and fence built by the Declarant or a Builder as part of the original construction on any Lot shall constitute a party wall or party fence (herein referred to as a "party structure") if:

a) any part of which is built upon or straddling the boundary line between two (2) adjoining Lots or between a Lot and the Common Area; or

b) which is constructed within five (5) feet of the boundary line between adjoining Lots, between a Lot and the Common Area, between a Lot and any public street or other property not subject to this Declaration, or between the Common Area and any public street or other property not subject to this Declaration, has no windows or doors, and is intended to serve as a privacy wall; or

c) which, in the reasonable determination of the Management Committee, otherwise serves and/or separates two adjoining Lots or a Lot and the Common Area, regardless of whether constructed wholly within the boundaries of one (1) Lot;

The Owners of any Lot served by a party structure shall own that portion of the party structure lying within the boundaries of such Owner's Lot and shall have an easement for use and enjoyment and, if needed, for support, in that portion, if any, of the party structure lying within the boundaries of the property adjoining his or her Lot. Each Owner shall be responsible for maintaining property insurance, providing Coverage for that portion of any party structure lying within the boundaries of such Owner's Lot and shall be entitled to all insurance proceeds paid under such policy on account of any insured loss. With respect to a party structure between Lots, the responsibility for the repair and maintenance of the party structure and the reasonable cost thereof shall be shared equally by the adjoining Lot Owners; provided, however, any damage to a party structure resulting solely from the actions of any Owner shall be repaired at the sole cost of such Owner. To the extent damage to a party structure from fire, water, soil settlement, or other casualty is not repaired out of the proceeds of insurance, any affected Owner may restore it. If other Owners thereafter benefit from the party

structure, they shall contribute to the restoration cost in equal shares without prejudice to any Owner's right to larger contributions from other users under any rule of law. Any Owner's right to contribution from another Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title. With respect to party structures between Lots and Common Area, between Lots and any public street, and between Lots and other property not subject to this Declaration, the Association shall be responsible for all maintenance and repair thereof, except that an Owner shall be responsible for painting and making cosmetic repairs to the portion of the party structure, other than any wrought iron comprising such party structure, facing his or her Lot. The Association shall be responsible for all maintenance and repair, including painting and cosmetic repairs, of all wrought iron comprising such party structures. The Association shall have an easement over any affected Lot to perform its maintenance responsibilities hereunder. Notwithstanding the above, unless otherwise agreed upon with the owner of property which is not subject to this Declaration, the Association shall maintain that portion of any party structure facing such property. With respect to any party structure between Common Area and any public street or other property which is not subject to this Declaration, unless otherwise agreed upon with the owner of such property, the Association shall be solely responsible for maintaining and repairing such party structures. The costs incurred by the Association in maintaining and repairing party structures pursuant to this Section shall be a Common Expense allocated among all Lots as part of the Base Assessment, without prejudice to the right of the Association to seek reimbursement from any Owner deemed to have caused the condition in need of repair pursuant to this Declaration, other recorded covenants, or agreements with such Persons. Notwithstanding the above, no Owner may remove a party structure or make structural or design changes to a party structure without first obtaining the written approval of all Owners of affected Lots and the Management Committee. This Section shall not apply to any party structure which separates the interiors of adjoining Dwelling Units. The rights of the Owners of adjoining Dwelling Units with regard to such party structures shall be governed by plats showing the boundaries of each of the adjoining Dwelling Units, and any specific covenants, conditions, and restrictions recorded with respect to such Dwelling Units.

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

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

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

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

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

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

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

31. Right of Entry. The Association or its agents or employees shall have a right to entry upon or into any Lot or Common Area as necessary to perform such work and shall not be liable for trespass or invasion of privacy for such entry or work.

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

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



written consent of the Management Committee.

34. Common Expenses. Each Owner, upon receipt of a deed to a Lot, shall pay his Assessments subject to and in accordance with the restrictions set forth below; provided, however, anything to the contrary notwithstanding, the Developer shall not be obligated to pay Assessments until such time as any residential structure, building or Dwelling Unit is substantially complete and a permanent certificate of occupancy has been issued or, in the alternative, the Developer elects in writing to commence payment, whichever first occurs.

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

b) Creation of Assessments. The Assessments shall pay for the common expenses of the Association as may be from time to time specifically authorized by the Management Committee. Each Owner, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association in a timely manner all Assessments assessed.

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

d) Itemization. Shall set forth an itemization of the anticipated Common Expenses for the twelve (12) month calendar year, commencing with the following January 1.

e) Basis. Shall be based upon advance estimates of cash requirements by the Management Committee to provide for the payment of all estimated Common Expenses growing out of or connected with the maintenance and operation of the Common Areas and the Association.

f) Apportionment. The common profits of the property shall be distributed among, the common expenses shall be charged (and voting rights shall be allocated) to the Lot Owners equally pursuant to Exhibit "B" attached. Percentages of ownership may only be modified with the affirmative express written consent of at least 2/3rds of the Owners duly expressed in a recorded document.

g) Approval of Budget and Assessments. The proposed Budget and the Assessments shall become effective unless disapproved at the Annual Meeting by a vote of at least a majority of the Owners present in person or by proxy at the meeting. Notwithstanding the foregoing, however, if the membership disapproves the proposed budget and Assessments or the Management Committee fails for any reason establish the Budget and Assessments for the succeeding year, then and until such time as a new budget and new Assessment schedule shall have been established, the

Budget and the Assessments in affect for the then current year shall continue for the succeeding year.

h) Payment of Assessments. The Management Committee has the sole authority and discretion to determine how and when the annual Assessments are paid, including a single lump sum payment, monthly installments or a combination.

i) Personal Obligation of Owner. Owners are liable to pay all Assessments assessed, accruing interest, late Assessments and collection costs, including attorneys Assessments. Provided, however, no first mortgagee or beneficiary under a first deed of trust who obtains title to a Lot pursuant to the remedies provided in the mortgage or trust deed shall be liable for unpaid Assessments which accrued prior to the acquisition of title.

j) Equitable Changes. If the aggregate of all monthly payments on all of the Lots is too large or too small as a result of unanticipated income or expenses, the Committee may from time to time effect an equitable change in the amount of said payments. Owners shall be given at least thirty (30) days written notice of any changes.

k) Reserve Accounts. The Committee shall establish and maintain a reserve account or accounts, such as one to pay for unexpected operating expenses and another to pay for major repairs, capital improvements, additions and so forth. The reserve accounts may be funded out of regular Assessments.

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

o) Waiver of Homestead Exemption. To the fullest extent permitted by law, by acceptance of the deed or other instrument of conveyance of a Unit, an Owner irrevocably waives the homestead exemption provided by the Utah Exemptions Act, U.C.A., Sections 78-23-1 through 78-23-14, as amended or supplemented from time to time, as the same may apply to a lien recorded to secure payment of an Assessment or Additional Charge.

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

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

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

36. Benefit Assessments. The Management Committee may assess an Owner in a particular area or Neighborhood provided the Owner has the choice to accept or reject the benefit:

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

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

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

37. Individual Assessments. Individual Assessments shall be levied by the Committee against a Lot and its Owner to pay, compensate or reimburse the Association for: (a) fines levied and costs incurred in enforcing the Project Documents; (b) costs associated with the maintenance, repair or replacement of Common Area damaged by an Owner or resident or which falls within the Area of Personal Responsibility as defined above; (c) any other charge, fee, due, expense, or cost designated as an Individual Assessment in the Project Documents including but not limited to landscape maintenance, detention basin area maintenance, roads, sidewalks, sub-surface drain systems and any other improvements contained within the common areas; and (d) attorneys' fees, interest, and other charges relating thereto as provided in this Declaration.

38. Collection of Assessments. The following restrictions apply to collections:

a) Time is of the Essence. Time is of the essence and all Assessments shall be paid promptly when due.

b) Delinquent Assessments. Any Assessments which are not paid when due are delinquent and a lien against the Lot affected shall attached automatically, regardless of whether a notice of lien is recorded.

c) Late Fees and Default Interest. Unless otherwise determined by the Management Committee, any Assessments delinquent for a period of more than ten (10) days shall incur a late fee of twenty five Dollars (\$25.00) or five percent (5%) of the delinquent amount,

whichever is greater. Interest at the rate of One and 1/2 percent (1.5%) per month shall accrue on all outstanding balances.

d) Lien. If the Owner of any Lot fails or refuses to make any payment of any Assessment or his portion of the Common Expenses when due, that amount shall constitute a lien on the interest of the Owner in the Property, and upon the recording of notice of lien by the Manager, Management Committee or their designee it is a lien upon the Owner's interest in the property prior to all other liens and encumbrances, recorded or unrecorded, except: (1) tax and special assessment liens on the Lot in favor of any assessing unit or special improvement district; and (2) encumbrances on the interest of the Owner recorded prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.

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

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

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

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

i) Foreclosure of Lien as Mortgage or Trust Deed. The lien for nonpayment of Assessments may be enforced by sale or foreclosure of the Owner's interest therein by the Committee. The sale or foreclosure shall be conducted in the same manner as foreclosures in deeds of trust or mortgages or in any other manner permitted by law. In any foreclosure or sale, the Owner shall pay the costs and expenses of such proceedings, including but not limited to the cost of a foreclosure report, reasonable attorney's Assessments, and a reasonable rental for the Lot during the pendency of the foreclosure action. The Association in the foreclosure action may require the

appointment of a receiver to collect the rental without regard to the value of the mortgage security. The Committee may bid for the Lot at foreclosure or other sale and hold, lease, mortgage, or convey the same.

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

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

l) Termination of Utilities for Non-Payment of Assessments.

1) If an Owner fails or refuses to pay any assessment when due, the Management Committee may terminate the Owner's right to receive utility services paid as a common expense; after giving notice and an opportunity to be heard.

2) Before terminating utility services the manager or Management Committee shall give written notice to the Owner in the manner provided in the Declaration, Bylaws, or Association rules. The notice shall state:

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

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

(c) the right to request a hearing.

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

books and records of the Association

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

5) If a hearing is requested, utility services may not be terminated until after the hearing has been conducted and a final decision has been entered.

6) Upon payment of the assessment due, including any interest or late payment fee, the manager or Management Committee shall immediately take action to reinstate the terminated utility services.

m) Assignment of Rents.

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

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

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

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

(d) provide the requirements and rights described herein.

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

(a) that due to the Owner's failure to pay the assessment within the

time period allowed, the Owner has been notified of the Management Committee's intent to collect all lease payments due to the Association pursuant hereto.

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

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

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

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

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

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

coverage to fund this obligation, if such insurance is reasonably available.

40. Utilities. Each Owner shall be and is hereby made subject to all easements that now or in the future may be used for gas, electric, telephone, cable television, cable for computers, water, sewer, and other lines present or in the future, as are necessary to provide utility services to said Lot, adjoining Lots, and the Improvements thereon. Each Owner by accepting a deed or other document of conveyance agrees to execute such further grant(s) or other instruments as may be required by any utility or other company or public governmental or quasi-governmental entity for such purposes. Subsequent to the date of the execution of this Declaration, any necessary electrical, telephone, gas, water, sewer, cable television, cable for computers, and other utility conduits, lines and pipes on any Lot shall be placed underground. No transformer, or electric, power, gas, water or other meter or device of any type, or any other apparatus shall be located on any pole within the Property. All utility installations must be approved by the Management Committee or its designee in writing in advance. Each Owner shall abide by all applicable rules and regulations of all utility and other companies, governmental entities or quasi-governmental entities, who supply or provide utilities or related services to the Property. The Declarant shall be obligated to install all street lights required by the City. Street lights installed on the Property, or any portion thereof, including without limitation any Lot, shall be subject to and governed by the City tariffs, assessments and fees, which are now effective or which may become effective in the future. This includes all rates, rules and regulations adopted by the City as they may be adopted, amended or repealed from time to time. Each Owner shall pay as billed his portion of the cost of street lighting as determined by the City.

41. Landscaping and Drainage. The following restrictions apply to all landscaping and drainage in the Property:

- a) Prior to commencement of any construction of any landscaping, fence, screening wall, retaining wall, arbor, gazebo, patio cover, roof or green space (i.e., lawns, ground cover or flowers), and prior to any planting of trees, bushes or shrubs, the prior written approval of the Management Committee must be obtained.
- b) The Declarant shall provide all of the initial landscaping at its expense.
- c) All Lots shall be kept free from plants infected with noxious insects or plant diseases which in the opinion of the Management Committee are likely to spread to other property, and all Lots shall be kept free of weeds. All yard areas shall be maintained free of weeds, junk, trash, and debris.
- d) When a Lot is improved with a Dwelling Unit and is landscaped, the following criteria for tree planting shall be followed in the front yard:
  - 1) A minimum of 3 trees shall be planted on the Lot.
  - 2) Of the 3 trees minimum to be planted, at least 1 deciduous trees with a



minimum 1 inch caliper (the diameter of the tree 10 inches above the top of root-ball), shall be planted. The species of these trees and the plantings shall be as per Town requirements along the front property line.

3) Of the 3 trees, 1 additional deciduous trees of a minimum one- half (?) inch caliper shall be planted elsewhere on the Lot; provided, however, on corner Lots these 2 trees shall be 1 inch caliper and planted on the front property line.

4) Of the 3 trees minimum to be planted, at least an additional evergreen tree of at least 5 feet in height (measured from the top of the root-ball to the top of the tree) shall be planted.

e) The front and side yards shall be maintained by the Association.

f) The rear yards shall be maintained by the Owners.

f) Fencing. All fencing must be wrought iron, vinyl or masonry. No chain link, wood or barbed wire fencing is permitted. No fencing may be installed by the Owner in the front yard, (or the side yard adjacent to a public street on a corner lot), of a Dwelling Unit, except that it may extend toward the side property lines only as far forward as the front corners of said Dwelling.

g) Drainage. No material change may be made in the ground level, slope, pitch or drainage patterns of any Lot as fixed by the original finish grading except after first obtaining the prior written approval of Management Committee. Grading shall be maintained at all times so as to conduct irrigation and surface waters away from Buildings and so as to protect foundations and footings from excess moisture. Any drainage flows directed to adjacent Lots should not exceed historic flows. Owners shall not impede or retain water flow in any of the natural drainage gulches.

h) Entries and Monuments. Entry structures may be placed on footprint easements on the Entry Lots. Such structures shall be maintained by the Association. The Association or its designated agents have right of access to perform maintenance. Lot Owners may not obstruct the view, attach any improvement, including fencing, to, against, or in front of such structures. Lot Owners shall maintain their Lots adjacent to the entry structures. The Association will maintain all entries including landscaping, monuments, walls and so forth.

42. **Insurance.** The Management Committee may adopt General Insurance House Rules, Policies and procedures intended as a guide for owners and residents in order to maintain the insurability of the project, keep the insurance premium reasonable, and enforce the maintenance responsibilities of the individual owners.

a)**Insurance Obligation of the Association.** The Association shall obtain the following insurance coverage (collectively, "Association master Policy"):

(1) **Public Liability.** Public liability coverage for the Common areas and Facilities;

(2) **Common Area and Facilities.** Property, fire and extended hazard coverage for all Common Areas and Facilities;

(3) **Buildings.** Property, fire and extended hazard coverage for all Buildings that contain more than one Lot or Unit (hereinafter "Dwelling Unit"), including any improvement which is a permanent part of a Building.

(4) **Dwelling Units.** Property, fire and extended hazard coverage for all Dwelling Units, including any improvement which is a permanent part of a Unit. For use herein the insurance required shall cover at least the interior Dwelling Unit boundaries, to wit: The horizontal boundaries extend to the intersection with the vertical boundaries. Each unit's lower boundary shall be a plane coinciding with the top of the concrete slab below the Unit's floor and each unit's upper boundary shall be a plane coinciding with the top of the Unit's ceiling. The vertical boundaries, extend to the intersection with each other and with the horizontal boundaries. Each Unit's vertical boundaries shall be its perimeter walls. This includes by way of illustration but not limitation the sheetrock, drywall or plaster, windows and window frames; doors; stairwell; appliances; mechanical equipment and appurtenances located within any one Dwelling Unit or located outside said Dwelling Unit but designated and designed to serve only that unit; plumbing-including all pipes, wires, conduits, or other public utility lines or installations constituting a part of the Dwelling Unit and serving only that Dwelling Unit including sewer, water main that enters the property and pipes within the home; electrical receptacles and outlets, air conditioning and compressors and other air cooling apparatus, boilers, water heaters and water softeners; cabinets, fixtures, lighting, sinks, tubs, counters, countertops and islands, hardware; all decorated (affixed) interiors and surfaces of interior structural walls, floor coverings, ceilings and trim, consisting of wallpaper, paint, wood floors, carpeting and tile; patio, porch or deck; interior of garage, storage and any other areas which shall pass with the title to the Dwelling Unit with which is associated and any Limited Common Area and facilities that are reserved for the use of the individual Unit

(5) **D&O.** Directors and officers coverage;

(6) **Fidelity Bond.** A fidelity bond; and

(7) **Earthquake Insurance.** With the affirmative express written consent of at least 75% of the Owners, earthquake insurance.

The Association Master Policy **DOES NOT** cover the contents or the personal property in the Dwelling Unit or belonging to the Owner or renter (as defined below), or personal liability. The Association **IS NOT REQUIRED** to cover loss of business, rents or rental income although it expressly reserves the right to obtain such and other coverage for its benefit.

(b) **Minimum Amount of Insurance Coverage.** The limits of each liability insurance policy purchased for the Association shall be in an amount not less than \$2,000,000.00 per occurrence and \$1,000,000.00 per person for bodily injury, death, and property damage. This amount may be increased or decreased unilaterally by the Management Committee upon a written recommendation for its insurance agent without amending the Declaration.

(c) **Premium a Common Expense.** The premiums for insurance coverage and the fidelity bond are to be considered a Common Expense.

(d) **Insurance obligation of Owner.** The foregoing obligation and right of the Association to purchase insurance coverage DOES NOT preclude the right or negate the obligation of each Owner to insure his own Dwelling Unit for his benefit.

**EACH OWNER SHALL OBTAIN AT LEAST THE FOLLOWING INSURANCE COVERAGE (COLLECTIVELY, "Owner Policy"):**

(1) Public Liability Insurance. **PUBLIC LIABILITY COVERAGE FOR HIS DWELLING UNIT. THE LIMITS OF HIS PUBLIC LIABILITY INSURANCE POLICY SHALL BE IN AN AMOUNT NOT LESS THAN \$500,000.00 FOR BODILY INJURY, DEATH, AND PROPERTY DAMAGE.** This amount may be increased or decreased unilaterally by the Management Committee upon a written recommendation for its insurance agent without amending the Declaration.

(2) Coverage "A" Building. **A COVERAGE "A" BUILDING POLICY IN THE MINIMUM AMOUNT OF \$25,000.00 IS REQUIRED TO COVER ANY AND ALL "SMALL" PROEPRTY, FIRE AND EXTENDED HAZARD CLAIMS IS REQUIRED BY THE ASOCIATION AND MUST BE ADDED TO EACH OWNER'S INDIVIDUAL UNIT OWNER POLICY (the "SMALL CLAIM COVERAGE").** This amount may be increased unilaterally by the Management Committee upon a written recommendation for its insurance agent without amending the Declaration.

**NOTE: THE "SMALL CLAIM COVERAGE" AMOUNT IS INTENDED ONLY TO PROTECT THE ASSOCIATION AGAINST "MULTIPLE" SMALL CLAIMS BY OWNERS WHICH MAY INCREASE THE PREMIUM FOR THE MASTER ASSOCIATION POLICY OR THREATEN CANCELLATION OF INSURANCE. EACH OWNER IS ENCOURAGED TO SPEAK WITH HIS INDEPENDENT INSURANCE AENT BEFORE DETERMINING THE MOUNT OF THIS "SMALL CLAIM COVERAGE."**

(3) Insurance of Contents and Lost Rents. The Owner is responsible to insure the contents of his Dwelling Unit and lost business, rents or rental income. For use herein the term "content" shall mean and refer to in the broadest possible sense all furniture, furnishings, appliance, accessories, dining and cooking ware, televisions, stereo equipment, electronic equipment and systems, computers, art, table lamps, linens, blankets, quilts, rugs, lost business, rents, income and

profits, personal items not specified in the original design and specification, and all personal property, belongings and effects in the Dwelling Unit, building or Common Area and Facilities not covered by the Master Association Policy.

(4) **Premium Is An Individual Expense.** The insurance premium on the Owner Policy shall be an Individual expense.

(5) **Maintenance of Coverage.** The Owner shall obtain and keep in full force and effect at all times the required insurance coverage provided by companies duly authorized to do business in Utah.

(6) **Not a Limitation.** The provisions of this subsection shall not be construed to limit the power or authority of the Owner to obtain and maintain insurance coverage in addition to any insurance coverage required hereunder, in such amounts and in such forms as he may deem appropriate.

(7) **Name Association as "Additional Insured."** Each Owner Policy shall name the Association as an "Additional Insured."

(8) **Certificate of Insurance.** Each Unit owner shall provide the Association with a "Certificate of Insurance" upon request.

(e) **Unit Owner's Default.** If a Unit owner fails to obtain his Unit Owner Policy or fails to provide a Certificate of Insurance within three (3) days of a request, and fails to remedy a default within ten (10) days of written notice, the Association may but is not obligated to purchase the required insurance and treat the cost as an individual Expense. Anything to the contrary notwithstanding, if a Unit Owner fails to obtain his Unit Owner Policy he shall be personally responsible to pay any deductible on the Master Association Policy.

(f) **Payment of Deductible.** It is presumed that the claimant is responsible to pay the deductible; provided, however, the deductible on a claim made against the Association Master Policy shall be paid for by the party (i) who would be liable for the loss, damage, claim, or repair in the absence of insurance or (ii) from whose parties, the loss shall be allocated in relation to the amount each party's responsibility bears to the total. If a loss is caused by an act of God or nature or by an element, risk or peril beyond the control of the parties, then the owner shall be responsible for the deductible. It is the intent of the Declarant to have the Association obtain property, fire and extended hazard insurance with a \$5,000.00 deductible. This amount may be increase or decreased unilaterally by the Management Committee upon a written recommendation for its insurance agent without amending the Declaration. Each Owner is encouraged to purchase insurance to cover the cost of the deductible.

(g) **Damages.** Each Owner is responsible for the maintenance of his Dwelling Unit and for the repair of any damage he causes to another Dwelling Unit or the common Area and Facilities.

(h) **Validity of Document.** If any term, part or provision of this document is ruled by a court of competent jurisdiction to be illegal or in conflict with any law of the State of Utah, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the document did not contain such term, part or provision.

(i) **Right to Adjust Claims.** The Association has the right, power and authority to adjust claims.

(j) **Use of Insurance Proceeds and Repairs.** Repair of damage shall be completed within a reasonable time and insurance proceeds shall be used to repair the covered damage.

(k) **Quality of Insurance Company.** The Association and Owners agree to and shall use a responsible insurance company or companies duly qualified and licensed in the State of Utah.

(1) **Primary Coverage.** It is the intent of the Declarant that in the event of duplicate coverage of a claim that the Owner Policy (Coverage A Building) described in subsection (d)(2) above provide **PRIMARY** coverage and that the Association Master Policy described in subsection (a)(3) above provide **SECONDARY** coverage.

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

b) **Liability Insurance.** Liability insurance with adequate limits of liability for bodily injury and property damage, consistent with that of similarly situated first class subdivisions in the county. If possible, the policy should be written on the comprehensive form and shall include not-owned and hired automobile liability protection.

c) **Director's and Officer's Insurance.** Adequate director's and officer's liability insurance.

d) **Fidelity Bond.** A separate fidelity bond not less than a sum equal to the total number of Lots multiplied by three (3) months' aggregate assessments.

e) **Quality of Coverage.** The bonds required shall meet the following additional requirements:

1) they shall name the Committee, the Owners Association, and the Property Manager as obligee;

2) if the insurance contract or bond excludes coverage for damages caused by persons serving without compensation, and may use that exclusion as a defense or reason not to pay a claim, the insurance company shall, if possible, be required to waive that exclusion or defense;

3) the premiums on all bonds required herein for the Committee and the Association (except for premiums on fidelity bonds maintained by a management agent for its officers, employees and agents) shall be paid by the Committee or the Association as part of the Common Expenses; and

4) the bonds shall provide that they may not be canceled or substantially modified, including cancellation for nonpayment of premium, without at least ten days' prior written notice to the Committee and the Association, to any Insurance Trustee, and to each service of loans on behalf of any Mortgagee, and FNMA.

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

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

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

i) The Insured. The name of the insured under each policy required to be maintained hereby shall be set forth therein substantially as follows: "Association of Lot Owners of Baywood Village for the use and benefit of the individual Owners."

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

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

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

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

n) Other Miscellaneous Provisions. Each insurance policy shall contain at least the following additional miscellaneous items:

1) Waiver of Subrogation. A waiver of the right of a subrogation against Owners individually;

2) Individual Neglect. A provision that the insurance is not prejudiced by any act or neglect of any individual Owner; and

o) Deductible. The deductible on a claim made against the Association's Property Insurance Policy shall be paid for by the claimant.

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

q) Adjusting Losses and Primary Coverage. The Management Committee may adjust losses. The insurance coverage of an Owner may at the election of the considered Management Committee be primary and the insurance of the Association secondary.

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

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

t) Special Endorsements. Each policy shall also contain or provide those endorsements commonly purchased by other Associations in similarly situated first class

subdivisions in the county, including but not limited to a guaranteed replacement cost endorsement under which the insurer agrees to replace the insurable property regardless of the cost and, or a Replacement Cost Endorsement under which the insurer agrees to pay up to 100% of the property's insurable replacement cost, but no more, and, if the policy includes a coinsurance clause, an Agreed Amount Endorsement which waives the requirement for coinsurance; an Inflation Guard Endorsement when it can be obtained, a Building Ordinance or Law Endorsement, if the enforcement of any building, zoning or land-use law will result in loss or damage, increased cost of repairs or reconstruction, or additional demolition and removal costs, and increased costs of reconstruction.

u) Restrictions on Policies. No insurance policy shall be maintained where:

1) Individual Assessments Prohibited. Under the term of the carrier's charter, By-Laws, or policy, contributions may be required from, or assessments may be made against, an Owner, a borrower, a Mortgagee, the Management Committee, the Association, FNMA, or the designee of FNMA.

2) Payments Contingent. By the terms of the Declaration, By-Laws, or policy, payments are contingent upon action by the carrier's board of directors, policyholder, or member; or

3) Mortgagee Limitation Provisions. The policy includes any limited clauses (other than insurance conditions) which could prevent the party entitled (including, without limitation, the Committee, the Association, an Owner, FNMA, or the borrowers) from collecting insurance proceeds.

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

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

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

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

2) "Partial Destruction" shall mean any other damage or destruction to the Project or any part thereof.



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

4) "Partial Condemnation" shall mean any other such taken by eminent domain or grant or conveyance in lieu thereof.

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

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

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

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

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

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

c) Restoration of the Project. Restoration of the Project shall be undertaken by the Committee promptly without a vote of the Owners in the event of Partial Destruction, Partial Condemnation, or Partial Obsolescence and shall also be undertaken in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence unless the failure to make Restoration is consented to by Owners collectively holding at least sixty-seven percent of the Project's undivided ownership interest and is further consented to by Eligible Mortgagees holding

Mortgages on Lots which have appurtenant at least fifty-one (51%) percent of the undivided ownership interest in the Common Areas and Facilities which is then subject to Mortgages held by Eligible Mortgagees.

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

e) Excess Insurance. If the insurance proceeds condemnation awards, or payments in lieu of condemnation actually received by the Committee or Association exceed the cost of Restoration when Restoration is undertaken, then the excess funds shall be placed in the Capital Improvement Reserve Account and retained by and for the benefit of the Association. This covenant is also for the benefit of the Association and any Mortgagee, and, therefore, may also be enforced by them. Payment to any Owner whose Lot is the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.

f) Inadequate Insurance. In the event the cost of Restoration exceeds Available Funds, all of the Lots shall be assessed for the deficiency on the basis of their respective percentages of undivided ownership interest in the Common Areas.

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

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

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

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

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

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

44. Consent in Lieu of Vote. In any case in which this Declaration requires the vote of an Owner for authorization or approval of an act or a transaction, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such proposed act or transaction from Owners who collectively hold the required percentages, subject to the following conditions:

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

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

45. Mortgagee Protection. The lien or claim against a Lot for unpaid Common Area Assessments levied by the Management Committee or by the Association pursuant to this Declaration or the Act shall be subordinate to any Mortgage recorded on or before the date such Common Area Assessments become due, subject to the following:

a) Effects of Voluntary and Involuntary Sale. The lien or claim against a Lot for such unpaid Common Area Assessments shall not be affected by any sale or transfer of such Lot, except that a sale or transfer pursuant to a foreclosure of the Mortgage affecting such Lot or the exercise of a power of sale available thereunder shall extinguish any debt payable prior to such sale or transfer. Nevertheless, any such unpaid Common Area Assessments which are extinguished in accordance with the foreclosure or power of sale shall not relieve the purchaser or transferee of such Lot from liability for, nor such Lot the lien of any Common Area Assessments becoming due thereafter.

b) Books and Records Available for Inspection. The Committee or the Association shall make available to the Owners, to Mortgagees, and lenders, and to holders, insurers, or guarantors of any Mortgage current copies of the Declaration, By-Laws, Articles of Incorporation, and administrative rules and regulations concerning the Project, as well as the books, records, and financial statements of the Committee and the Association. The term "Available", as used in the

Paragraph, shall mean available for reasonable inspection upon request during normal business hours or under other reasonable circumstances. The Association shall have the right to recover its photocopying and service charges incurred in making the inspection and photocopying available.

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

d) Management Contracts. Any agreement for professional management of the Project, and any contract for goods or services, or any lease which is entered into by the Management Committee or the Association shall provide or be deemed to provide hereby that either party may terminate the contract with or without cause upon at least thirty (30) days prior written notice to the other party thereto.

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

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

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

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

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

f) No Right of First Refusal. The right of an Owner to sell, transfer, or otherwise convey his Lot shall not be subject to any right of first refusal or similar restriction.

46. Amendment. This Declaration may be amended as follows:

a) Declarant. Unilaterally by the Declarant during the Period of Declarant's Control.

b) Consent of the Owners. The affirmative vote of at least 2/3rds of the Owners shall be required and shall be sufficient to amend the Declaration or the Plat Map. Any amendment so authorized shall be accomplished through the recordation of an instrument executed by the Management Committee. In such instrument the Committee shall certify that the vote required by this Section for amendment has occurred, and, if approval of a specified percentage of Eligible Mortgagees is required for such amendment, that such approval has been obtained; and

c) Consent of Eligible Mortgagee. The consent of at least 2/3rds of the Eligible Mortgagees shall be required to any amendment which would terminate the legal status of the Project; and the consent of Eligible Mortgagees holding at least fifty-one percent of the undivided ownership interest in the Common Areas shall be required to add to or amend any material provision of this Declaration or the Plat Map which establishes, provides for, governs, or regulates any of the following: (1) voting rights; (2) increases in assessments that raise the previously assessed amount by more than 25%, assessment liens, or the priority of assessment liens; (3) reductions in reserves for maintenance, repair, and replacement of the Common elements; (4) insurance or fidelity bonds; (5) limitations and restrictions on the right to use of the Common Areas; (6) responsibility for maintenance and repairs; (7) expansion or contraction of the Project or the addition, annexation or withdrawal of property to or from the Project; (8) the boundaries of any Lot; (9) the percentages of ownership interest in the Common Areas; (10) convertibility of a Lot into Common Areas or Common Area into a Lot; (11) the imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his Lot; (12) express benefits or rights of Mortgagees, Eligible Mortgagees, or Eligible Insurers or Guarantors; and (13) the requirement that the Project be professionally managed rather than self managed. Any addition or amendment shall not be considered material for purposes of this Paragraph b) if it is for the clarification only or to correct a clerical error. Notice of any proposed amendment to any Eligible Mortgagee to whom a written request to approve an addition or amendment to this Declaration or the Plat Map is required shall be mailed postage prepaid to the address for such Mortgagee shown on the list maintained by the Association. Any Eligible Mortgagee who does not deliver to the Committee or the Association a negative response to the notice of the proposed amendment within thirty (30) days from the date of such mailing shall be deemed to have approved the proposal. The foregoing consent requirements shall not be applicable to amendments to this Declaration and the Plat Map or the termination of the legal status of the Project. If such amendments or such termination are made or accomplished in accordance with the provisions of this Declaration regarding Condemnation or Substantial Obsolescence.

47. Declarant's Sales Program. Notwithstanding anything to the contrary, until Declarant has sold all the Lots owned by it in the Project or the expiration of a reasonable sales period following ten (10) years after the date on which this Declaration is filed for record in the office of the County Recorder, whichever first occurs (hereinafter referred to as the "Occurrence"), neither the Owners, the Association nor the Committee shall interfere with the completion of improvements and

sale of all remaining Lots, and Declarant shall have the following rights in furtherance of any sales, promotions or other activities designed to accomplish or facilitate the sale of all Lots owned by Declarant:

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

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

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

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

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

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

50. Working Capital Fund. A working capital fund shall be established by the Declarant to meet unforeseen expenditures or to purchase any additional equipment or services. The initial working capital fund shall be in an amount equal to two (2) months of estimated common assessments for each Lot which shall be assessed to and collected from the buyer at closing (the "set-

up fee"). The set-up fee shall not be considered as advance payments of regular monthly assessments. The working capital fund shall be transferred to the Association for deposit to a segregated fund when control of the Association is transferred to the Lot Owners. The Declarant is prohibited from using the working capital fund to defray any of its expenses, reserve contributions, or construction costs or to make up any budget deficits while it is in control of the Association.

51. Transfer of Management. Declarant may at any time relinquish its reserved right to select the members of the Management Committee and may elect to transfer the management of the Project to a Management Committee elected by the Owners.

a) Upon the termination of the Period of Declarant's Control, Declarant shall notify Owners in writing of the effective date of such transfer (the "Transfer Date"). Within forty-five (45) days after delivery of the notice, the Owners shall call a meeting to elect the members of the Management Committee to take office as of the Transfer Date.

b) Declarant covenants to cooperate with the Owners in effecting an orderly transition of management.

c) On or before the meeting, the Declarant shall cause all obligations for Common Expenses of the Association prior to the Transfer Date to be paid in full on or before such date, and shall transfer any Association funds to the newly elected Management Committee.

d) On or before the meeting, the Declarant shall deliver the books and records of the association to the newly elected Management Committee.

52. Certain Provisions Applicable to Declarant. Notwithstanding any other provision herein contained, for so long as Declarant continues to own any of the Lots the following provisions shall be deemed to be in full force and effect, none of which shall be construed so as to relieve the Declarant from any obligations of an Owner to pay Common Area Assessments or Assessments, except as herein otherwise provided, as to each Lot owned by Declarant in accordance with the Declaration.

a) Declarant specifically disclaims any intent to have made any warranty or representation in connection with the Project or the Declaration except as specifically set forth herein or in any agreement for sale of a Lot, and no person shall rely upon any warranty or representation not so specifically made therein.

b) No amendment may be made to the Declaration without the written consent of Declarant so long as Declarant retains the ownership of five (5) or more Lots within the Project.

53. Interpretation. To the extent Utah law is consistent with this Declaration, such provisions shall supplement the terms hereof and are incorporated herein. The captions which precede the sections of this Declaration are for convenience only and shall in no way affect the

manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.

54. Covenants to Run with Land. This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Association, all other signatories hereto, all parties who hereafter acquire any interest in a Lot or in the Project, and their respective grantees, transferees, heirs, devisees, personal representative, successors, and assigns. Each Owner or resident of a Lot shall comply with, and all interests in all Lots shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, supplements, amendments, and determinations contemplated by this Declaration. By acquiring any interest in a Lot in the Project, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

55. Enforcement and Right to Recover Attorney's Fees. The Association, Management Committee, or any aggrieved Owner may take action, at law or in equity, to recover damages, obtain injunctive relief, or enforce the terms, covenants or conditions of the Project Documents. Should the Association, Management Committee or an Owner be required to take action to enforce the Project Documents, or to pursue any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing suit or otherwise, they may recover all Additional Charges, including a reasonable attorney's fee, which may arise or accrue.

56. Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Project designed to make the Project safer than it otherwise might be. However, neither the Association nor the Committee shall in any way be considered insurers or guarantors of security within the Project. Neither the Association nor the Management Committee shall be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. All Owners and residents, their guests and invitees, as applicable, acknowledge that neither the Association nor the Committee represent or warrant that any security measures undertaken will insure their safety. All Owners and residents, their guests and invitees, acknowledge and understand that the Association and Committee are not insurers of their safety and they hereby assume all risks for loss or damage to their person or property and further acknowledge that the Association and Committee have made no representations or warranties, nor have they relied upon any representations or warranties, expressed or implied, including any warranty or merchantability or fitness for any particular purpose, relative to any security measures undertaken within the Project.

57. Agent for Service of Process The initial Registered Agent shall be Paul Nielsen. The Registered Office of the Registered Agent is 11254 Eagle View Drive, Sandy, Utah 84092.

58. Fines. Each Owner and Resident is responsible for adhering to the Project



Documents governing the Project. Pursuant to U.C.A., Section 57-8-37 (2001), a breach of these restrictive covenants and rules is subject to enforcement pursuant to the Declaration and may include the imposition of a fine. Each Owner is also accountable and responsible for the behavior of his or her residents, tenants and/or guests. Fines levied against residents, tenants, and guests are the responsibility of the Owner. The Management Committee shall react to each material violation in the following manner:

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

b. Before assessing a fine under Subsection (a), the Management Committee shall give notice to the Owner of the violation and inform the Owner that the fine will be imposed if the violation is not cured within the time provided in the Declaration, bylaws, or rules, which shall be at least twenty-four (24) hours.

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

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

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

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

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

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

f. An Owner may appeal a fine issued hereunder by initiating a civil action within one hundred and eighty (180) days after: (a) A hearing has been held and a final decision has been rendered by the Management Committee under Subsection (e); or (b) The time to request an informal hearing hereunder has expired without Owner making such a request.

g. A fine assessed hereunder which remains unpaid after the time for appeal has expired becomes a lien against the Owner's interest in the property in accordance with the same standards as a lien for the nonpayment of Common Expenses set forth above.

59. Re-sell Moratorium. Each first purchaser of a Lot from the Declarant or his assign by acceptance of a deed or other document of conveyance covenants, promises and agrees not to re-sell or attempt to re-sell his Lot for a period of 18 months after the date of Closing, except in the case of a hardship (the "Moratorium"). The Declarant in its sole discretion shall be empowered to allow a Lot to be sold during the Moratorium upon written application to avoid undue hardship on an Owner.

By way of illustration and not by limitations, examples of circumstances which would constitute undue hardship are those in which: (a) an Owner must relocate his residence and cannot, within ninety (90) days from the date the Lot was placed on the market, lease the Lot; (b) the Owner dies and the Lot is being administered by his estate; (c) the Owner takes ill and is unable to reside in the Lot; (d) the Lot is to be sold to a member of the Owner's immediate family, which shall be deemed to encompass children, grandchildren, grandparents, brothers, sisters, parents, and spouses. Any Owner who believes that he must sell his Lot during the Moratorium to avoid undue hardship shall submit a written application to the Declarant setting forth the circumstances necessitating the sale and such other information as the Declarant may reasonably require. Selling a Lot during the Moratorium in the case of undue hardship shall be permitted only upon the Declarant's written approval of the Owner's application. An Owner who shall have demonstrated to the Declarant that selling his Lot during the Moratorium is necessary to prevent undue hardship shall receive a written "Notice of Leave to Sell Lot" from the Declarant and may thereafter sell the Lot. Upon the expiration of 18 month period after the date of Closing of the sale of the Lot, this Moratorium shall automatically terminate. This Moratorium does not apply to lenders, mortgagees or beneficiaries under a trust deed who acquire a Lot by foreclosure or a deed in lieu of foreclosure.

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

61. Duration. These restrictive covenants shall run with the land and shall be binding upon the owners thereof, their heirs, successors and assigns until December 31, 2045, after which time said covenants shall be automatically extended for successive periods of ten (10) years.

62. Limitation of Liability.

(a) Duties. The Declarant and its officers, directors, employees, agents and representatives shall not be liable or accountable in damages or otherwise hereunder to the any Owner for any action taken or failure to act, unless the act or omission constitutes willful misconduct.

(b) Waiver. Each Owner, by acceptance of a deed or other document of conveyance, agrees to make no claim, under any circumstance or legal theory, including tort, contract, or otherwise, and hereby waives, to the fullest extent permitted by law,

any claim or cause of action of any nature against the Declarant and its officers, directors, employees, agents and representatives, which may arise out of or in connection with the development of this project, including Owner's Property, by any of the parties above named, of the services under this Declaration, except for claims or causes of action arising out of the declarant's willful misconduct. This includes but it not limited to any and all indirect, special, incidental, or consequential damages of any character including, without limitation, damages for economic loss, loss of use, loss of income or depreciation.

- (c) **Limitation of Liability.** Under not circumstances and under no legal theory, tort, contract or otherwise, shall Declarant or its officers, directors, employees, agents and representatives be liable to an Owner or any other person for any indirect, special, incidental, or consequential damages of any character including, without limitation, damages for economic loss, loss of use, loss of income. In no event will Declarant, be liable for any damages in excess of the amount Declarant, received from said Owner for the property, even if Declarant shall have been informed of the possibility of such damages, or for any claim by any other party. This limitation of liability shall not apply to any loss or liability to the extent applicable law prohibits such limitation.

63. **Easments.**

63.a **Grant of Easement.** Declarant hereby reserves to itself and grants to the Association a nonexclusive, perpetual right-of-way and easement over, across and through the Tract, together with the right to use, operate, maintain, repair and replace the Common areas and Facilities, subject to all of the terms, covenants, conditions and restrictions set forth herein.

63.b **Common Use of Easement.** Said easement is to be used in common by the Association, Declarant and each Owner, subject to all of the terms, covenants, condition and restrictions set forth herein.

63.c **Private Easement.** The easement created is intended to be used as a private non-exclusive easement for the exclusive use and benefit of Declarant, Association and each Owner.

63.d **Encroachments.** If any part of the Common Areas and Facilities encroaches or shall hereafter encroach upon a Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the common Area and Facilities, or upon an adjoining Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. Such easements shall extend for whatever period the encroachment exists. Such encroachments shall not be considered to be encumbrances either on the Common Area and Facilities or the Units. Encroachments referred to herein include, but are not limited to, encroachments or to be constructed within the Project, by error in the Final Plat, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of

the project or any part thereof.

**63.e Rights of Access.** Each Owner shall have the right to ingress and egress over, upon and across the Common Area and Facilities as necessary for access to the Unit he is occupying and to any Limited common Area appurtenant to his Unit, and he shall have the right to the horizontal, vertical and lateral support of his Unit.

**63.f Construction Easements.** The Declarant hereby reserves for itself and its affiliates and assignees a temporary construction easement over the Common Area and Facilities, for the purpose of doing all things that are reasonably necessary as a part of constructing any new improvements for the Project including all physical improvements as well as all Building, Units and Common Area and Facilities. The Owners do hereby acknowledge and agree that there will be construction activities, traffic, noises, odors and vibrations which may temporarily disrupt their quiet enjoyment of their Units and the Common Area and Facilities, until all improvements are complete, and such owners do hereby waive any right to object to such construction activity; provided, however, Declarant shall endeavor to use reasonable efforts to minimize the adverse impact of such construction activities on the Owners of Units in the project, Declarant's construction activities pursuant to the easement granted hereunder shall not be deemed to be a violation of the Use Restrictions.

**63.g Locations Facilities Easements.** Declarant reserves a non-exclusive easement for itself and its affiliates and assignees to construct, operate, maintain, repair and replace all types of telecommunication facilities, including but not limited to roof antennas, within suitable locations for such facilities (the "Locations of Facilities") within the Project. Declarant further reserves to itself a right of access to the Locations of Facilities over, across, and through all other common Area and Facilities of the Project in order to access the Locations of Facilities to exercise the rights established herein. Declarant reserves the perpetual right to transfer by easement, license agreement or other conveyance the rights reserved hereunder to one or more telecommunication facilities provider. Declarant may exercise all of such right unilaterally and without the consent of any Owner, Mortgagee or the Association. The Association, on behalf of all Owners, agrees to execute such further and additional instruments as may be requested by Declarant documenting the rights hereunder, in form satisfactory to the Declarant, and any assignee of its right hereunder.

**63.h Entry Monument Easement.** Easements the Entry Monument and corresponding utility and drainage systems and facilities, and irrigation are reserved hereby and on the recorded Final Plat. An Owner may not do any landscaping, grading or work, or install any structure, building, improvement, planting, or other object, natural or artificial, or materials which may damage or interfere with the direction of flow of drainage channels in, on or about the easements and right of way, or which may obstruct or retard the flow of water through the drainage channels in the easements and rights of way. If a drainage channel is altered by an Owner, the Declarant and/or the Association expressly reserve the right to enter onto the property to restore the area at the cost of the Owner, and without being guilty of a trespass. In addition, the easement and right of way area of or on each Lot, including by way of illustration but not limitation, the Entry Monument, in whole or in part, utilities, drainage systems and facilities, and irrigation, and all improvements within said area



**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

The Land comprising the Project described in the foregoing Declaration is located in Salt Lake County, Utah and is described more particularly as follows:

**BAYWOOD VILLAGE AT KIMBALL'S LANE TOWNHOMES**  
**COMMON AREA DESCRIPTION**

Basis of bearing is South 89°58'40" East between the Southwest Corner of Section 19 and the South Quarter Corner of Section 19, Township 3 South, Range 1 East, Salt Lake Base and Meridian. Beginning at a point being 591.10 feet South 89°58'40" East and 33.00 feet North 00°01'20" East from the Southwest Corner of Section 19, Township 3 South, Range 1 East, Salt Lake Base and Meridian; and running thence North 00°01'20" East, 613.50 feet; thence South 89°58'40" East, 701.60 feet; thence North 15°37'34" East, 89.91 feet; thence South 00°14'40" East, 68.60 feet; thence South 89°58'40" East, 2.79 feet; South 00°01'20" West, 600.49 feet; thence South 00°14'40" East, 64.01 feet; thence North 89°58'40" West, 306.62 feet; thence North 00°01'20" East, 53.00 feet; thence North 89°58'40" West, 140.86 feet; thence South 00°01'20" West, 16.75 feet; thence North 89°58'40" West, 140.86 feet; thence South 00°01'20" West, 3.25 feet; thence North 89°58'40" West, 140.86 feet to the point of beginning.

Contains: 10.45 Acres (more or less)

**LESS AND EXCEPTING THERE FROM THE FOLLOWING:**  
All of the area contained within Units 1-75

**EXHIBIT "B"**  
**PERCENTAGES OF OWNERSHIP INTEREST**

<u>Lot No.</u>	<u>Fractional Interest</u>	<u>Percentage of Ownership Interest</u>
1	1/75	1.333%
2	1/75	1.333%
3	1/75	1.333%
4	1/75	1.333%
5	1/75	1.333%
6	1/75	1.333%
7	1/75	1.333%
8	1/75	1.333%
9	1/75	1.333%
10	1/75	1.333%
11	1/75	1.333%
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68	1/75	1.333%
69	1/75	1.333%
70	1/75	1.333%
71	1/75	1.333%
72	1/75	1.333%
73	1/75	1.333%
74	1/75	1.333%
75	1/75	1.333%

TOTAL: 100.00%



**EXHIBIT "C"**  
**BY-LAWS**

The administration of the Baywood Village at Kimball's Lane Townhomes (the "property") and the Baywood Village at Kimball's Lane Townhomes Owners Association (the "association") shall be governed by these By-laws.

**1. Application of Bylaws.**

All present and future Owners, mortgagees, lessees and occupants of Lots and their employees, and any other persons who may use the facilities of the property in any manner are subject to the declaration, these bylaws and all rules made pursuant hereto and any amendment thereof. The acceptance of a deed or conveyance or the entering into of a lease or the act of occupancy of a Lot shall constitute an agreement that the provisions of the declaration and these bylaws (and any rules and regulations made pursuant thereto), as they may be amended from time to time, are accepted, ratified and will be complied with.

**2. Management Committee.**

a). The administration of the property on behalf of the association shall be conducted by a Management Committee of three natural individuals.

b). At the annual meeting of the association, the Lot Owners shall elect the members of the Management Committee for the forthcoming year. At least thirty (30) days prior to any annual meeting of the association, the Management Committee shall elect from the Lot Owners a nominating committee of not less than three (3) members (none of whom shall be members of the then Management Committee) who shall recommend to Owners present at the annual meeting one nominee for each position on the Management Committee to be filled at that particular annual meeting. Nominations for positions on the Management Committee may also be made by petition filed with the secretary of the association at least seven (7) days prior to the annual meeting of the association, which petition shall be signed by ten (10) or more Lot Owners and signed by the nominee named therein indicating his willingness to serve as a member of the Management Committee, if elected. Members of the Management Committee shall be required to be Lot Owners, and must be natural individuals and residents of the State of Utah.

c). Members of the Management Committee shall serve for a term of two years; provided, however, at the first annual meeting of the Association after the expiration of the Period of Declarant's Control, two members shall be elected for a 2-year term and one member shall be elected for a 1-year term. Thereafter all members shall be elected for a 2-year term. The members of the Management Committee shall serve until their respective successors are elected, or until their death, resignation or removal. Any member of the Management Committee who fails to attend three (3) consecutive Management Committee meetings or fails to attend at least 25% of the Management Committee meetings held during any calendar year shall forfeit his membership on the Management

d). Any member of the Management Committee may resign at any time by giving written notice to the president of the association, or the remaining Management Committee members. Any member of the Management Committee may be removed from membership on the Management Committee by a two-thirds majority vote of the association. Whenever there shall occur a vacancy on the Management Committee due to death, resignation, removal or any other cause, the remaining members shall elect a successor member to serve until the next annual meeting of the association, at which time said vacancy shall be filled by the association for the unexpired term, if any.

e). The members of the Management Committee shall receive no compensation for their services unless expressly approved by a majority of the association; provided, however, that any member of the Management Committee may be employed by the association in another capacity and receive compensation for such employment.

f). The Management Committee, for the benefit of the property and the association, shall manage the business, property and affairs of the property and the association and enforce the provisions of the declaration, these bylaws, the house rules and the administrative rules and regulations governing the property. The Management Committee shall have the powers, duties and responsibilities with respect to the property as contained in the act, the declaration and these bylaws.

g). The meetings of the Management Committee shall be held at such places within the State of Utah as the Management Committee shall determine. A majority of the members of the Management Committee shall constitute a quorum, and if a quorum is present, the decision of a majority of those present shall be the act of the Management Committee. The Management Committee shall annually elect all of the officers of the association. The meeting for the election of officers shall be held at the first meeting of the Management Committee immediately following the annual meeting of the association.

h). Special meetings of the Management Committee may be called by the president or by any two (2) Management Committee members.

i). Regular meetings of the Management Committee may be held without call or notice. The person or persons calling a special meeting of the Management Committee shall, at least ten (10) days before the meeting, give notice thereof by any usual means of communication. Such notice need not specify the purpose for which the meeting is called; if an agenda is prepared for such a meeting, the meeting need not be restricted to discussions of those items listed on the agenda.

j). Any member of the Management Committee may, at any time, waive notice of any meeting of the Management Committee in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member of the Management Committee at a meeting shall constitute a waiver of notice of such meeting except if a Management Committee member attends the meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called. If all the members of the Management Committee are present at

any meeting of the Management Committee, no notice shall be required and any business may be transacted at such meeting.

k). The fiscal year shall be determined by the Management Committee.

### 3. Meetings of the Association.

a). The presence in person or by proxy at any meeting of the association of fifty percent (50%) of the Lot Owners in response to notice of all Lot Owners of record properly given shall constitute a quorum. In the event that fifty percent (50%) of the Lot Owners are not present in person or by proxy, the meeting shall be adjourned for twenty-four (24) hours, at which time it shall reconvene and any number of Lot Owners present at such subsequent meeting shall constitute a quorum. Unless otherwise expressly provided in the declaration, any action may be taken at any meeting of the Lot Owners upon a majority vote of the Lot Owners who are present in person or by proxy and who are voting.

b). The Annual Meeting shall be held at such time as Management Committee shall determine as may be designated by written notice by the Management Committee delivered to the Owners not less than thirty (30) days prior to the date fixed for said meeting. At or prior to an annual meeting, the Management Committee shall furnish to the Lot Owners: (a) a budget for the coming fiscal year that shall itemize the estimated common expenses of the coming fiscal year with the estimated allocation thereof to each Lot Owner; and (b) a statement of the common expenses itemizing receipts and disbursements for the previous and current fiscal year, together with the allocation thereof to each Lot Owner. Within ten (10) days after the annual meeting, that budget statement shall be delivered to the Lot Owners who were not present at the annual meeting.

c). Special meetings of the association may be held at any time at the property or at such other reasonable place to consider matters which, by the terms of the declaration, require the approval of all or some of the Lot Owners, or for any other reasonable purpose. Special meetings shall be called by written notice, signed by a majority of the Management Committee, or by Lot Owners representing at least one-third (1/3) in interest of the undivided ownership of the common areas and facilities and delivered to all Lot Owners not less than fifteen (15) days prior to the date fixed for said meeting. The notices shall specify the date, time and place of the meeting, and the matters to be considered.

d). Robert's Rules of Order (latest edition) shall govern the conduct of the association's meeting when not in conflict with the declaration or these bylaws.

### 4. Officers.

a). All officers and employees of the association shall serve at the will of the Management Committee. The officers shall be a president, secretary and treasurer. The Management Committee may appoint such other assistant officers as the Management Committee

may deem necessary. No officer shall be required to be a Lot Owner, but the president must be a member of the Management Committee. No officer shall receive compensation for serving as such. Officers shall be annually elected by the Management Committee and may be removed and replaced by the Management Committee.

b). The president shall be the chief executive of the Management Committee and shall preside at all meetings of the Lot Owners and of the Management Committee and may exercise the powers ordinarily allocable to the presiding officer of an association, including the appointment of committees. The president shall exercise general supervision over the property and its affairs. He shall sign on behalf of the association all conveyances, mortgages and contracts of material importance to its business. He shall do and perform all acts which the Management Committee may require.

c). The secretary shall keep minutes of all proceedings of the Management Committee and of the meetings of the association and shall keep such books and records as may be necessary and appropriate for the records of the Lot Owners and the Management Committee. In the absence or inability of the president, the secretary shall perform the functions of the president.

d). The treasurer shall be responsible for the fiscal affairs of the association, but may delegate the daily handling of funds and the keeping of records to a manager or managing company.

#### 5. Litigation.

a). If any action is brought by one or more but less than all Lot Owners on behalf of the association and recovery is had, the plaintiffs expenses, including reasonable counsel's fees, shall be a common expense; provided, however, that if such action is brought against the Lot Owners or against the Management Committee, the officers, employees, or agents thereof, in their capacities as such, with the result that the ultimate liability asserted would, if proved, be borne by all the Lot Owners. The plaintiffs expenses, including counsel fees, shall not be charged to or borne by the other Lot Owners, as a common expense or otherwise.

b). Complaints brought against the association, the Management Committee or the officers, employees or agents thereof, in their respective capacities as such, or the property as a whole, shall be directed to the Management Committee, which shall promptly give written notice thereof to the Lot Owners and any mortgagees and shall be defended by the Management Committee, and the Lot Owners and mortgagees shall have no right to participate other than through the Management Committee in such defense. Complaints against one or more, but less than all Lot Owners shall be directed to such Lot Owners, who shall promptly give written notice thereof to the Management Committee and to the mortgagees affecting such Lots, and shall be defended by such Lot Owners.

#### 6. Abatement and Enjoinment of Violations by Lot Owners.

The violation of any house rules or administrative rules or regulations adopted by the Management Committee or the breach of any provision contained herein, or the breach of any provision of the declaration, shall give the Management Committee the right, in addition to any other rights set forth in these bylaws:

a). To enter the Lot in which or as to which such violation or breach exists and to similarly abate and remove, at the expense of the defaulting Lot Owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Management Committee shall not thereby be deemed guilty in any manner of trespass; or

b). To enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach.

#### 7. Accounting.

a). The books and accounts of the association shall be kept in accordance with generally accepted accounting procedures under the direction of the treasurer.

b). At the close of each fiscal year, the books and records of the Management Committee may be audited, reviewed or compiled by a certified public accountant approved by the association.

c). The books and accounts of the association shall be available for inspection at the office of the association by any Lot Owner or his authorized representative during regular business hours.

#### 8. Special Committees.

The Management Committee by resolution may designate one or more special committees, each committee to consist of two (2) or more Lot Owners, which to the extent provided in said resolution, shall have and may exercise the powers set forth in said resolution. Such special committee or committees shall have such name or names as may be determined from time to time by the Management Committee. Such special committees shall keep regular minutes of their proceedings and report the same to the Management Committee when required. The members of such special committee or committees designated shall be appointed by the Management Committee or the president. The Management Committee or the president may appoint Lot Owners to fill vacancies on each of said special committees occasioned by death, resignation, removal or inability to act for any extended period of time.

#### 9. Amendment of Bylaws.

These bylaws may be amended by a majority affirmative vote of the association at a meeting duly called for such purposes. Any material amendment to these bylaws must be approved in writing by all mortgagees as defined in the declaration. Upon such an affirmative vote, the Management

Committee shall acknowledge the amended bylaws, setting forth the fact of the required affirmative vote of the Lot Owners and mortgagees where necessary and the amendment shall be effective upon recording.

10. Severability.

The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion hereof shall not affect the validity or enforceability of any other provision hereof.

11. Captions.

The captions herein are inserted only as a matter of convenience and for reference and in no way to define, limit or describe the scope of these bylaws nor the intent of any provision hereof.

12. Effective Date.

These bylaws shall take effect upon recording of the declaration of which they are a part.

EXECUTED the 19<sup>th</sup> day of Sept, 2008.

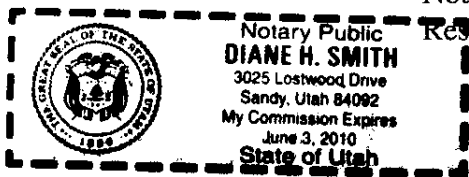
DECLARANT:  
Kimbals Lane I.L.C.,  
A Utah limited liability company

By: [Signature]  
Name: Paul W Nielsen  
Title: Managing Member

STATE OF UTAH )  
)ss. -  
COUNTY OF SALT LAKE )

On the 19<sup>th</sup> day of Sept, 2008, personally appeared before me Paul W Nielsen, who by me being duly sworn, did say that he is the Managing Member of Kimbals Lane I, LLC, a Utah limited liability company, and that the within and foregoing instrument was signed in behalf of said company pursuant to the resolution of its Members or its Articles of Organization and said Paul W Nielsen duly acknowledged to me that said company executed the same.

[Signature]  
Notary Public



Residing at

**EXHIBIT "D"**  
**LEGAL DESCRIPTION OF COMMON AREA**

The LAND referred to in the foregoing document as Common Area is located in Salt Lake County, Utah and is described more particularly as follows:

**BAYWOOD VILLAGE AT KIMBALL'S LANE TOWNHOMES**  
**COMMON AREA DESCRIPTION**

Basis of bearing is South 89°58'40" East between the Southwest Corner of Section 19 and the South Quarter Corner of Section 19, Township 3 South, Range 1 East, Salt Lake Base and Meridian. Beginning at a point being 591.10 feet South 89°58'40" East and 33.00 feet North 00°01'20" East from the Southwest Corner of Section 19, Township 3 South, Range 1 East, Salt Lake Base and Meridian; and running thence North 00°01'20" East, 613.50 feet; thence South 89°58'40" East, 701.60 feet; thence North 15°37'34" East, 89.91 feet; thence South 00°14'40" East, 68.60 feet; thence South 89°58'40" East, 2.79 feet; South 00°01'20" West, 600.49 feet; thence South 00°14'40" East, 64.01 feet; thence North 89°58'40" West, 306.62 feet; thence North 00°01'20" East, 53.00 feet; thence North 89°58'40" West, 140.86 feet; thence South 00°01'20" West, 16.75 feet; thence North 89°58'40" West, 140.86 feet; thence South 00°01'20" West, 3.25 feet; thence North 89°58'40" West, 140.86 feet to the point of beginning.

Contains: 10.45 Acres (more or less)

**LESS AND EXCEPTING THERE FROM THE FOLLOWING:**  
All of the area contained within Units 1-75