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When recorded hold for:  
First American Title Company  
c/o DR Horton Homes  
11075 South State Street, Suite 30  
Sandy, Utah 84070

ENT 112825:2002 PG 1 of 39  
RANDALL A. COVINGTON  
UTAH COUNTY RECORDER  
2002 Sep 25 3:57 pm FEE 73.00 BY SS  
RECORDED FOR D R HORTON INC

**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
THE HOMEOWNERS' ASSOCIATION  
FOR THE  
PIONEER PERFORMANCE DEVELOPMENT  
PHASES "B", "C", "D", "E" and A FUTURE PHASE "F",  
YET TO BE RECORDED**

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DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS & EASEMENTS

PIONEER PERFORMANCE DEVELOPMENT

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS ( this "Declaration") is made this 30 day of September, 2002 by DRHI, Inc., an Utah corporation ("Declarant").

RECITALS

A. Declarant is the owner and developer of certain real property in the City of Provo, County of Utah, State of Utah, which is more particularly described as follows:

PIONEER PERFORMANCE DEVELOPMENT, PHASES "B", "C", "D", "E" AND A FUTURE PHASE F THAT HAS YET TO BE RECORDED. THE PERIMETER LEGAL DESCRIPTION FOR PHASE "F" HAS BEEN ATTACHED TO THIS DOCUMENT AS EXHIBIT "A";

B. Declarant desires that an Utah non-profit corporation, Pioneer Homeowners' Association, be formed for the purpose of the efficient preservation of the values and amenities of the Pioneer Performance Development (Pioneer) and to which will be delegated certain powers of administering and maintaining the Open Space, enforcing this Declaration, and collecting and disbursing the assessments created herein.

C. Declarant desires and intends that the Property shall be held, sold and conveyed, subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the Property and shall be binding on and for the benefit of all parties having or acquiring any right, title or interest in the Property or any part thereof, their heirs, successors or assigns, and shall inure to the benefit of each owner thereof and their heirs, representatives, successors and assigns.

NOW, THEREFORE, DECLARANT hereby declares, covenants and agrees as follows:

ARTICLE I  
DEFINITIONS

In addition to the terms defined elsewhere in this Declaration, the following terms shall have the meanings described herein.

Section 1.1 "Architectural Committee" shall mean the committee created pursuant to Article VII hereof.

Section 1.2 "Architectural Committee Rules" shall mean the rules, if any, adopted by the Architectural Committee.

Section 1.3 "Articles" shall mean the Articles of Incorporation of the Association, as such may be amended from time to time.

Section 1.4 "Association" shall mean and refer to Pioneer HOMEOWNERS' ASSOCIATION, a Utah non-profit corporation, its successors and assigns.

Section 1.5 "Board" shall mean the Board of Directors of the Association.

Section 1.6 "Bylaws" shall mean the Bylaws of the Association, as such may be amended from time to time.

Section 1.7 "Declarant" shall mean the Declarant designated above or any person or entity who has succeeded to Declarant's rights and powers hereunder as to all or a portion of the Property and to whom Declarant's rights hereunder have been assigned by recorded instrument.

Section 1.8 "Declaration" shall mean the covenants, conditions, restrictions and easements set forth in this document, as such may be amended from time to time.

Section 1.9 "Lot(s)" shall mean any numbered parcel of real property shown upon any recorded plat of the Property together with any improvements constructed thereon, with the exception of the areas designated as lettered tracts and areas dedicated to the public. Each Lot shall be a separate freehold estate.

Section 1.10 "Member(s)" shall mean any person, corporation, partnership, joint venture or other legal entity that is a member of the Association.

Section 1.11 "Owner(s)" shall mean the record owner, whether one or more persons or entities, of equitable or beneficial title in fee simple (or legal title if same have merged) of any Lot. "Owner(s)" shall include the purchaser under a recorded

agreement for sale of any Lot. The foregoing does not include persons or entities who hold an interest in any Lot merely as security for the performance of an obligation. Except as stated otherwise herein, "Owner(s)" shall not include a lessee or tenant of a Lot. "Owner(s)" shall include Declarant so long as Declarant owns any Lot within the Property.

Section 1.12 "Open Space" shall mean those areas designated on each phase of Pioneer as Open Space.

Section 1.13 "Person(s)" shall mean an individual, corporation, partnership, limited liability company, trustee or other entity capable of holding title to real property under Utah law.

Section 1.14 "Property" or "Properties" shall mean the real property described in Recital A above which is subject to this Declaration.

Section 1.15 "Rules" shall mean the rules and regulations adopted by the Board, if any, as such may be amended from time to time, as more further described in Section 4.4.

Section 1.16 "Visible from Neighboring Property" shall mean, with respect to any given object, visible to a person six feet tall, standing on any part of neighboring property at an elevation no greater than ground level where the object is located (assuming the ground level where the person is standing is at the same height as the ground level where the object is located).

## ARTICLE II PROPERTY RIGHTS

Section 2.1 Owners' Easements of Enjoyment. Every Owner shall have a non-exclusive right and easement of enjoyment in and to the Open Space which shall be appurtenant to and shall pass with the title to the Association, subject to the following provisions:

- (a) the right of the Association to charge reasonable admission and other fees for the use of any recreational or storage facilities or areas situated upon the Open Space;
- (b) the right of the Association to suspend the voting rights and right to use of the Open Space by an Owner for any period during which any assessment against his Lot remains unpaid;
- (c) the right of the Association to suspend the right to use the Open Space for a period not to exceed sixty (60) days for any infraction of the Association Rules and consecutive sixty (60) day periods for so long as the infraction



continues;

- (d) the right of the Association to limit the number of guests of members using the Open Space;
- (e) the right of the Association to change and regulate the use of Open Space in accordance with Section 4.6;
- (f) the right of the Association to change the size, shape or location of the Open Space, to exchange the Open Space for other property or interests which become Open Space, and to abandon, dedicate or otherwise transfer Open Space in accordance with Section 4.7 hereof; and
- (g) the right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Open Space and facilities, and in aid thereof, to mortgage said property in accordance with Section 8.2(e) hereof. The rights of such mortgagee in said property shall be subordinate to the rights of the Owners hereunder.

Section 2.2 Delegation of Use. Any Owner may delegate, in accordance with and subject to any restrictions contained in the Bylaws, his right of enjoyment to the Open Space and improvements thereon to his tenants, or occupants of his Lot, or guests.

Section 2.3 Owners' Easement of Enjoyment Limitations.

- (a) An Owner's right and easement of enjoyment in and to the Open Space shall not be conveyed, transferred, alienated or encumbered separate and apart from an Owner's Lot and such right and easement of enjoyment in and to the Open Space shall be deemed to be conveyed, transferred, alienated or encumbered upon the sale of any Owner's Lot, notwithstanding that the description in the instrument of conveyance, transfer, alienation or encumbrance may not refer to the Open Space.
- (b) Except as authorized by Section 2.1(f), the Open Space shall remain undivided and no action for partition or division of any part thereof shall be permitted.
- (c) Each Owner, his tenant, the occupant of his Lot, and his guests may use the Open Space in common with the Owners, invitees, tenants, and occupants of the other Lots in accordance with the purposes for which it is intended without hindering or encroaching upon the lawful right of such others and in accordance with the Association Rules established by the Board.

Section 2.4 Title to Open Space. Declarant covenants that it will convey fee simple title to the Open Space to the Association, free of all encumbrances except current real and personal property taxes and other easements, conditions, reservations and restrictions then of record. The conveyance shall be made to the Association prior to the conveyance of the first Lot from the Declarant to any purchaser.

### ARTICLE III PROPERTY SUBJECT TO THIS DECLARATION

Section 3.1 General Declaration. Because it is intended that the Property as presently subdivided shall be sold and conveyed to purchasers subject to this Declaration, Declarant hereby declares that the Property is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred in whole or in part, subject to this Declaration, as amended from time to time; provided, however, property which is not part of a Lot and which is dedicated or transferred to a public authority or utility pursuant to Section 4.7 shall not be subject to this Declaration while owned by the public authority or utility. This Declaration is declared and agreed to be in furtherance of a general plan for the subdivision, improvement and sale of the Property and is established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Property. This Declaration shall run with all of the Property for all purposes and shall be binding upon and inure to the benefit of Declarant, the Association, all Owners, Members and their respective successors in interest.

### ARTICLE IV THE ASSOCIATION

Section 4.1 The Association. The Association is an Utah non-profit corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws, and this Declaration. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise modified or interpreted so as to be inconsistent with this Declaration.

Section 4.2 The Board of Directors and Officers. The affairs of the Association shall be conducted by a Board of Directors and such officers as the Board may elect or appoint, in accordance with the Articles and the Bylaws.

Section 4.3 Powers and Duties of the Association. The Association shall have such rights, duties and powers as set forth herein and in the Articles and Bylaws.

Section 4.4 Rules. By action of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend, and repeal rules and regulations to be known as the "Rules". The Rules may restrict and govern the use of the Property; provided, however, that the Rules may not discriminate among Owners.

and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the Rules, as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner. The Rules shall have the same force and effect as if they were set forth herein and were a part of this Declaration and may be recorded.

Section 4.5 Indemnification. To the fullest extent permitted by law, the Association shall indemnify the following Persons against all expenses and liabilities including, but not limited to, attorneys' fees, reasonably incurred by or imposed upon such Person in connection with any proceeding to which such Person may be a party, or in which such Person may become involved, by reason of such Person being or having served in any capacity on behalf of the Association (or by reason of having appointed, removed or controlled or failed to control members of the Board or the Architectural Committee):

- (a) every director and officer of the Association and every member of the Architectural Committee and any other committee of the Association;
- (b) Declarant; and
- (c) every person serving as an employee of the Association.

Any such Person shall be entitled to indemnification whether or not such Person is a director, officer or member of the Association or of the Architectural Committee or any other committee of the Association or serving in any other such specified capacity at the time such expenses are incurred, provided that the Board shall determine, in good faith, that the Person to be indemnified hereunder did not act, fail to act, or refuse to act with gross negligence or fraudulent or criminal intent in the performance of its duties. The foregoing rights of indemnification shall be in addition to, and not in place of, all other rights to which such Persons may be entitled at law or otherwise.

Section 4.6 Procedure for Change of Use of Open Space. Upon (a) adoption of a resolution by the Board stating that the then current use of a specified part of the Open Space is no longer in the best interests of the Owners and Members, and (b) the approval of such resolution by a majority of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for such purpose, the Board shall have the power and right to change the use thereof, not including detention basin and other city storm drainage related features without and approval from the city (and in connection therewith to take whatever actions are required to accommodate the new use, this is not to include the detention basin or drainage related features. Approval from city prior to change of use or modification to Open Space in or around detention basin structures or storm drainage related features), provided such new use: (i) also shall be for the common benefit of the Owners and Members, and (ii) shall be consistent with any recorded tract declaration, deed restrictions or zoning regulations. Alternatively, the Board upon satisfaction of Subsection 4.6(a) above may, in lieu of calling a meeting, notify in writing all Members of the proposed transaction and of their

right to object thereto and, if no more than ten percent (10%) of the Class A Memberships eligible to vote object in writing within thirty (30) days after receipt of such notice, the proposed transaction shall be deemed approved by the Members and a meeting of the Members shall not be necessary. Any changes to the Detention Basin, including change of use or modifications to the Open Space in or around the Detention Basin structure, proposed plans are to be submitted to the City for preapproval. Approval from the City will be required prior to the change of use or modification of the Open Space. The Detention Basins related hydraulic features will be the responsibility of the City. All other non hydraulic Detention Basin system related features will be the responsibility of the Pioneer Association.

Section 4.7 Procedure for Transfers of Open Space. The Association shall have the right to dedicate or transfer all or any part of the Open Space to any public authority or utility (i) if the transfer or dedication does not have a substantial adverse effect on the enjoyment of the Open Space by the Members or the residents, or (ii) if required by a recorded subdivision plat, a zoning stipulation or an agreement with the City of Provo, effective prior to the date hereof. Except as authorized in (i) or (ii) above, no such dedication or transfer shall be effective without the approval of a majority of the vote of each class of Members, voting in person or by proxy at a meeting called for such purpose. The Association shall have the right to change the size, shape or location of the Open Space, to exchange the Open Space for other property or interests which become Open Space, and to abandon or otherwise transfer Open Space, not including detentions storm drain related features (to a non-public authority) upon (x) the adoption of a resolution by the Board stating that ownership and/or use of the relevant Open Space is no longer in the best interests of the Owner and Members, and that the change desired shall be for their benefit and shall not substantially adversely affect them, and (y) the approval of such resolution by a majority of the votes of each class of Members, voting in person or by proxy, at a meeting called for such purpose. Alternatively, the Board upon satisfaction of Subsection 4.7(x) above may, in lieu of calling a meeting pursuant to Subsection 4.7(y) above, notify in writing all Members of the proposed transaction and of their right to object thereto and, if no more than ten percent (10%) of the Class A Members eligible to vote object in writing within thirty (30) days after receipt of such notice, the proposed transaction shall be deemed approved by the Members and a meeting of the Members shall not be necessary.

Section 4.8 Areas of Association Responsibility. The Association, or its duly delegated representative, shall manage, maintain, repair and replace the areas within the Property that are the responsibility of the Association ("Areas of Association Responsibility"), and all improvements located thereon, except for any part of the Areas of Association Responsibility which any governmental entity is maintaining, or is obligated to maintain, in accordance with the maintenance standard as determined by the Board. The Board shall be the sole judge as to the appropriate maintenance, repair and replacement of all Areas of Association Responsibility. The Association shall have the responsibility to maintain all detention basins, non-hydraulic related features within and around the detention basins. Basins #6 and #7 are the sole responsibility of the home owners association.

ARTICLE V  
MEMBERSHIP AND VOTING RIGHTS

Section 5.1 Membership. Every Owner of a Lot which is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 5.2 Voting Rights. The Association shall have two (2) classes of voting membership:

**Class A.** Class A Members shall be all Owners, with the exception of the Declarant. Each such Owner shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as such Owners among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

**Class B.** The Class B Member shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either the following events, whichever first occurs:

- (a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or
- (b) The 31st day of December, 2012.

ARTICLE VI  
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 6.1 Creation of the Lien and Personal Obligation of Assessments. Declarant covenants for each Lot, and each Owner of any Lot by acceptance of a deed therefor (whether or not it shall be so expressed in such deed) is deemed to covenant and agree to pay to the Association: (1) annual assessments and (2) special assessments for capital improvements or any other special assessments to defray the operating cost of the Association in any one given year said special assessment is assessed, such assessments to be established and collected as hereinafter provided. A Lot owned by the Association, pursuant to Section 6.11 or otherwise, shall not be subject to assessment.

The annual and special assessments, together with interest costs and reasonable attorneys' fees including collection costs, shall be a charge on the Lot and shall be a continuing lien thereon as well as the personal obligation of the Person who was the Lot Owner at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to the Lot Owner's successors in title, unless

expressly assumed.

Section 6.2 Capital Reserve Fund. To ensure that the Association shall have adequate funds to meet its reserve amounts, each Person who is the initial purchaser of a Lot (other than the Declarant or any developer) shall pay to the Association immediately upon becoming the Owner of a Lot a sum equal to one-sixth (1/6th) of the current annual assessment for the Lot ("Capital Reserve Fee"). Funds paid to the Association pursuant to this Section 6.2 are to be used by the Association for the purpose of establishing reserves. Such funds may only be used to establish a replacement and repair reserve account or to apply towards repair and reconstruction of improvements within Areas of Association Responsibility. Payments made pursuant to this Section 6.2 shall be non-refundable and shall not be considered as an advance payment of any assessments levied by the Association pursuant to this Declaration.

Section 6.3 Transfer Fee. In addition to the Capital Reserve Fee referred to in Section 6.2, each purchaser of a Lot shall pay to the Association immediately upon becoming the Owner of the Lot, other than the first Owner of the lot, a transfer fee in such amount as is established from time to time by the Board to cover the expenses of the Association (or its management/accounting company) to change its records, to administer the change in ownership, and to pay any ancillary expenses related thereto.

Section 6.4 Reserve Studies. The Board shall periodically obtain reserve studies and updates to assist the Board in determining an appropriate amount for repair and replacement reserves for the Association; provided, however, (i) no such report or study shall be required until at least three (3) years have elapsed following the date Assessments begin to accrue; and (ii) the results of any such studies and reports shall be advisory only and the Board shall have the right to provide for reserves which are greater or less than those shown in the study; and (iii) in establishing replacement and repair reserves for the Association, in addition to the recommendations of any such studies or reports and other relevant factors, the Board may take into account (a) the past incidences of required repairs at the Property; and (b) projected funds available to the Association pursuant to future Capital Reserve Fees paid pursuant to Section 6.2 of this Declaration.

Section 6.5 Purpose of Assessments. In order to promote civic and social betterment for the common good of the Members of the Association, the assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents and Owners of the Property and for the improvement and maintenance of the Open Space.

Section 6.6 Maximum Annual Assessment. Until December 31, 2003, the maximum annual assessment shall be Eight hundred-four Dollars and No/100 (\$804.00) per single-family Lot and One thousand eighty-eight Dollars and No/100 (\$1,188.00) per town house Lot. The annual assessment shall be payable annually, semi-annually, quarterly, or monthly as determined by the Board.

- (a) From and after January 1, 2004, the maximum annual assessment shall automatically increase effective January 1 of each year without a vote of the members by an amount which is equal to the greater of: (i) five percent (5%) of the maximum assessment for the previous year; or (ii) a percentage equal to the average rate of change of the Consumer Price Index (the "CPI") for the most recent past twelve (12) months. For the purposes hereof, CPI shall mean the Monthly Labor Review by the United States Department of Labor Statistics, designated "Consumer Price Index--U.S. City Average for Urban Wage Earners and Clerical Workers, 1982-84 Equals 100, All Items." The maximum annual assessment automatically increases each year even if the actual assessment does not increase.
- (b) In addition to Section 6.6(a) above, the maximum annual assessment during each fiscal year of the Association shall be automatically increased by the amounts of any increases in water or other utility charges or any increases to insurance rates charged to the Association; and
- (c) From and after January 1, 2009, the maximum annual assessment may be increased above the amount indicated in Section 6.6(a) above by a vote of two-thirds (2/3) of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose.
- (d) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 6.7 Special Assessment for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy in any assessment year other special assessments to defray the cost of operating the Association; provided, however, that any such assessments shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for such purpose.

Section 6.8 Notice and Quorum for any Action Authorized Under Sections 6.6 and 6.7. Written notice of any meeting called for the purpose of taking any action authorized under Sections 6.6 and 6.7 shall be sent to all Members not less than fifteen (15) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast thirty percent (30%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6.9 Uniform Rate of Assessment. Except as provided herein, the annual assessments must be fixed at a uniform rate for all Lots and may be collected

on an annual, semi-annual, quarterly, or monthly basis, as designated by the Board. Notwithstanding the foregoing sentence, Declarant shall pay twenty-five percent (25%) of the annual assessments for each Lot which Declarant owns annually, semi-annually, quarterly, or monthly in the same manner established for payment of the annual assessment amount by other Lot Owners, except that Declarant shall pay and be liable for the full assessment amount for any Lots owned by Declarant which are being used by Declarant as model homes or otherwise being used and occupied for residential purposes (but not sooner than the closing of the first Lot to a residential homebuyer). Notwithstanding the above, any home builder in the business of constructing residential improvements on Lots and who buys Lots from Declarant for such purpose shall pay twenty-five percent (25%) of the annual assessments for each Lot which such builder owns or leases and which is not being occupied for residential purposes. Any Owner renting or leasing a Lot to Declarant which is not being occupied for residential purposes shall pay twenty-five percent (25%) of the annual assessment for such Lot.

Section 6.10 Date of Commencement of Annual Assessments: Due Date. The annual assessments provided for herein shall commence as of the first day of the month following the conveyance of the first Lot. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by a representative of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as to the matters described therein. If the amount of the annual assessment is not fixed by the Board thirty (30) days prior to the next fiscal year, then the current assessment shall be used until the Board establishes the next annual assessment. Failure by the Board to notify the Owners of the new annual assessment shall not relieve said Owners of assessments due the Association.

Section 6.11 Effect of Non-Payment of Assessments: Remedies of the Association. Any assessment not paid within fifteen (15) days after the due date shall be subject to a late payment charge equal to the greater of Fifteen Dollars (\$15.00) or ten percent (10%) per annum interest on the amount unpaid, which shall be assessed on the amount owing from the date of delinquency until such time as it is paid, but in no event exceeding the maximum rate or amount allowed by law. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Open Space or abandonment of his Lot. In addition, the Board may, in its discretion, require an Owner and any predecessor in interest who was in arrears at the time of a voluntary conveyance to pay a late charge, in an amount to be determined by the Board, but in no event exceeding the maximum rate or amount allowed by law, for delinquency in the payment of Assessments which are fifteen (15) days or more overdue.

(a) Enforcement by Suit. The Board may cause a suit at law to be



commenced and maintained in the name of the Association against an Owner to enforce each such assessment obligation. Any judgment rendered in any such action shall include the amount of the delinquency together with interest thereon at the rate of ten percent (10%) per annum or such lower rate that is equivalent to the maximum rate allowed by law, from the date of delinquency, court costs, reasonable attorneys' fees, late fees, collection costs and lien fees in such amount as the court may adjudge against the delinquent Owner.

- (b) Enforcement by Lien. There is hereby created a claim of lien on each and every Lot within the Property to secure payment to the Association of any and all assessments levied against any and all Owners of Lots covered by this Declaration, together with interest thereon at the rate of ten percent (10%) per annum or such lower rate that is equivalent to the maximum rate allowed by law, and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorneys' fees. At any time after the occurrence of any default in the payment of any such assessment, the Association, or any authorized representative may, but shall not be required to, make a written demand for payment to the defaulting Owner on behalf of the Association. Said demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand or claim of lien or a lien, but any number of defaults may be included within a single demand or claim of lien. If such delinquency is not paid within ten (10) days after delivery of such demand, or even without such a written demand being made, the Association may elect to file such claim of lien on behalf of the Association against the Lot of the defaulting Owner. Such claim of lien shall contain substantially the following information: (1) the name of the delinquent Owner; (2) the legal description and street address of the Lot against which the claim of lien is made; (3) the total interest thereon, collection costs, and reasonable attorneys' fees; (4) a statement that the claim of lien is made by the Association pursuant to this Declaration, and (5) a statement that a lien is claimed against such Lot in an amount equal to the amount stated.

Upon recordation of a duly executed original or copy of such claim of lien, and mailing a copy thereof to the defaulting Owner, the lien claimed shall immediately attach and become effective in favor of the Association as a lien upon the Lot against which such assessment was levied. Such lien shall have priority over all liens or claims created subsequent to the recordation of the claim of lien, except only tax liens for real property taxes and liens which are specifically described in Section 6.12. Any such lien may be foreclosed by appropriate action in court in the manner provided by law for the foreclosure of a realty mortgage or by the exercise of a power of sale in the manner provided by law under a trust deed, as set forth by the laws of the State of Utah, as the same may be changed or amended. The lien provided for herein shall be in favor of the Association and shall be for the benefit of all other Lot Owners. The Association shall

have the power to bid in at any foreclosure or trustee's sale and to purchase, acquire, hold, lease, mortgage, and convey any such Lot. In the event of such foreclosure or trustee's sale, reasonable attorneys' fees, court costs, trustee's fees, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law. Each Owner, by becoming an Owner of a Lot, hereby expressly waives any objection to the enforcement and foreclosure of this lien in this manner.

Section 6.12 Subordination of the Lien to First Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure, foreclosure or trustee's sale, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability or any assessments thereafter becoming due or from the lien thereof.

Section 6.13 No Offsets. All assessments and charges shall be payable in the amount specified in the assessment or by notice and no offsets against the specified amount shall be permitted for any reason, including, but not limited to, a claim that (a) the Association, the Board, or Declarant is not properly exercising its duties and powers as provided in this Declaration; (b) assessments for any period exceed expenses for the Association; or (c) an Owner has made, or elects to make, no use of the Open Space or Areas of Association Responsibility.

## ARTICLE VII ARCHITECTURAL CONTROL

Section 7.1 Organization, Power of Appointment and Removal of Members. There shall be an Architectural Committee, organized as follows:

- (a) Committee Composition. The Architectural Committee shall consist of five (5) or three (3) members (in any case, an odd number) the Board so appoints, and two (2) alternate members. None of such members shall be required to be an architect or to meet any other particular qualifications for membership. A member of the Architectural Committee need not be, but may be, a member of the Board or an officer of the Association.
- (b) Alternate Members. In the event of the absence or disability of one (1) or two (2) members of said Architectural Committee, the remaining member or members, even though less than a quorum, may designate either or both of the alternate members, if any, to act as substitutes for the absent or disabled Architectural Committee member or members for the duration of such absence or disability, who shall thereupon become Architectural Committee members during such term of designation.
- (c) Terms of Office. Subject to Section 7.1(b), members of the Architectural

Committee shall serve until they resign, are removed, or are replaced.

- (d) Appointment and Removal. The right to appoint and remove all appointed and alternate members of the Architectural Committee at any time is hereby vested solely in the Board; provided however, that no member may be removed from the Architectural Committee by the Board except by the vote or written consent of fifty-one percent (51%) of all regular (or alternates sitting as regular) Board members.
- (e) Vacancies. Vacancies on the Architectural Committee, however caused, shall be filled by the Board.

Section 7.2 Duties. It shall be the duty of the Architectural Committee to consider and act upon any and all proposals or plans submitted to it pursuant to the terms hereof, to adopt rules and regulations (the "Architectural Committee Rules") and procedures for appeal to the Board, and to carry out all other duties imposed upon it by this Declaration. In doing so, the Architectural Committee may appoint and designate, by a majority vote of the Architectural Committee, a representative (who need not be a Lot Owner) who shall have the authority to exercise those rights and powers and who shall have those duties and liabilities, on behalf of the Architectural Committee, until the Architectural Committee, by a majority vote, shall revoke his appointment and designation.

Section 7.3 Meetings and Compensation. The Architectural Committee shall meet from time to time as necessary to perform its duties hereunder. Subject to Section 7.1(b), the vote or written consent of a majority of Architectural Committee members, at a meeting or otherwise, shall constitute the act of the Architectural Committee, unless the unanimous decision of the Architectural Committee is otherwise required by this Declaration. The Architectural Committee shall keep and maintain a written record of all actions taken by it at such meetings or otherwise. Members of the Architectural Committee may be entitled to compensation for their services.

Section 7.4 Architectural Committee Rules. The Architectural Committee shall adopt, and may, from time to time and in its sole and absolute discretion, amend and repeal, by unanimous vote or written consent, the Architectural Committee Rules. The Architectural Committee Rules shall interpret and implement this Declaration by setting forth the standards and procedures for Architectural Committee review and the guidelines for architectural design, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features which are recommended for use within the Property.

Section 7.5 Waiver. The approval by the Architectural Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Architectural Committee under this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan,

drawing specification or matter subsequently submitted for approval.

Section 7.6 Time for Approval. In the event the Architectural Committee fails to approve or disapprove the plans and specifications, such will be deemed approved within forty-five (45) days after their submission.

Section 7.7 Liability. Neither the Architectural Committee nor any member thereof shall be liable to the Association, any Owner, or to any other party on account of (a) the approval or disapproval of any plans, drawings, or specifications, or similar documents whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, (c) the overall development of the Property, or (d) the execution and filing of any estoppel certificate, whether or not the facts therein are correct; provided, however, that with respect to the liability of a member, such member has acted in good faith, on the basis of such information as may be possessed by such member, and without gross negligence or willful misconduct. Without in any way limiting the generality of any of the foregoing provisions of this Section, the Architectural Committee, or any member thereof, may, but is not required to, consult with or listen to the views of the Association or any Owner with respect to any proposal submitted to the Architectural Committee.

## ARTICLE VIII USE RESTRICTIONS

Section 8.1 Permitted Uses and Restrictions - Residential. The permitted uses, easements, and restrictions for all Property covered by this Declaration shall be as follows:

- (a) Single Family Residential Use. All Lots shall be used, improved, and devoted exclusively to single family residential use. No trade or business may be conducted on any Lot except that an Owner may conduct a business activity within the dwelling unit on the Lot so long as: (1) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the dwelling unit on the Lot; (2) the business activity conforms to all applicable zoning ordinances or requirements for the Property; (3) the business activity does not involve persons coming on to the Lot or the door-to-door solicitation of Owners; (4) the business activity is consistent with the residential character of the Property and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of any portion of the Property or other Owners, and (5) the business actually conducted on a Lot does not involve any on-site employees other than family members residing on the Lot, all as may be determined from time to time in the sole discretion of the Architectural Committee. The terms "business" and "trade" as used in this Section 8.1 shall be construed to have ordinary, generally accepted meanings. These shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis, which involves the provision of

goods or services to persons, and for which the provider receives a fee, compensation, or other form of consideration. Regardless of whether: (1) such activity is engaged in full or part time; (2) such activity is intended or does generate a profit; or (3) a license is required for such activity. Nothing herein shall be deemed to prevent the leasing of any Lot with the improvements thereon to a single family from time to time by the Owner thereof, subject to all of the provisions of this Declaration. Lots owned by Declarant or its designee or assignee may be used as model homes and for sales and construction offices. This is for the purpose of enabling Declarant or its designee or assignee to sell Lots within the Property until such time as all of the Lots owned by Declarant or its designee or assignee have been sold or leased to purchasers or tenants. Leasing of Lots must be for thirty days (30) or longer. A copy of the lease agreement evidencing any such lease must be provided to the Association. The lease agreement must provide that the tenant will abide by this Declaration and all rules and regulations of the Association.

- (b) Antennas. No antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be erected, used or maintained so as to be Visible from Neighboring Property, unless approved by the Architectural Committee in accordance with Federal Communication Regulations.
  
- (c) Utility Service. All lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be contained in conduits or cables installed and maintained underground or concealed in, under, or on buildings or other structures approved by the Architectural Committee. Temporary power or telephone structures incident to construction activities approved by the Architectural Committee are permitted in accordance with Federal Communication Regulations.
  
- (d) Improvements and Alterations. No improvements, alterations, repairs, excavation or other work which in any way alters the exterior appearance of the Property or the improvements located thereon from its natural or improved state existing on the date such Property was first conveyed by Declarant to a home buyer shall be made without the prior approval of the Architectural Committee, except as otherwise expressly provided in this Declaration. No building, fence, wall, or other structure shall be erected, maintained, improved, altered, made or done (including choice of exterior color scheme and building materials) without the prior written approval of the Architectural Committee or any subcommittee thereof. Pursuant to its rulemaking power, the Architectural Committee shall establish a procedure for the preparation, submission, and determination of applications for any such alteration or improvement. The Architectural

Committee shall have the right, in its sole discretion, to refuse to approve any plans, specifications or grading plans, which are not suitable or desirable, for aesthetic or other reasons, and in so passing upon such plans, specifications and grading plans, and without any limitation of the foregoing, it shall have the right to take into consideration the suitability of the proposed building or other structure, and of the materials of which it is to be built, the site upon which it is proposed to erect the same, the harmony thereof with the surroundings and the effect of the building or other structure as planned, on the outlook from adjacent or neighboring Property. No changes or deviations in or from such plans and specifications once approved shall be made without the prior written approval of the Architectural Committee.

- (e) Maintenance of Lawns and Plantings. All yards visible from the street shall have acceptable landscaping installed within a reasonable period of time not to exceed 180 days from the close-of-escrow to the first home buyer as to a specific Lot. Lots shall be maintained by their Owners free of weeds and debris; lawns shall be neatly mowed and trimmed; bushes shall be trimmed; and dead plants, trees, or grass shall be removed and replaced.
- (f) Repair of Buildings. No improvement upon any Property shall be permitted to fall into disrepair, and each such improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished.
- (g) Trash Containers and Collection. No garbage or trash shall be placed or kept on any Property except in covered sanitary containers. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make same available for collection and, then, only the shortest time reasonably necessary to effect such collection. All rubbish, trash, or garbage shall be removed from the Lots and shall not be allowed to accumulate thereon. No incinerators shall be kept or maintained on any Lot.
- (h) Overhangs. No tree, shrub, or planting of any kind on any Property shall be allowed to overhang or otherwise to encroach upon any Open Space from ground level to a height of twelve (12) feet, without the prior approval of the Architectural Committee.
- (i) Machinery, Equipment and Structures. No machinery or equipment of any kind shall be placed, operated or maintained upon the Property except usual and customary equipment and machinery used in connection with the use, maintenance or construction of permitted improvements, and except that which Declarant or the Association may require for the operation and maintenance of the Open Space. Slides, playground

equipment, basketball poles and hoops, outdoor decks, gazebos and other such equipment or structures shall be allowed provided they are approved by the Architectural Committee. Without limiting the foregoing approval rights, any basketball pole and hoop must be located a minimum of twenty (20) feet from all side and rear Lot lines.

- (j) Restriction on Further Subdivision. No Lot shall be further subdivided or separated into smaller Lots or parcels by any Owner, and no portion less than all of any such Lot, shall be conveyed or transferred by any Owner, without the prior written approval of the Board. No Lot may be converted into a condominium or cooperative or other similar type of entity without the prior written approval of the Board. No further covenants, conditions, restrictions or easements shall be recorded against any Lot without the written consent of the Board being evidenced on the recorded instrument containing such restrictions and without such approval such restrictions shall be null and void. No applications for rezoning, variances, or use permits shall be filed without the written approval of the Board and then only if such proposed use is in compliance with this Declaration.
- (k) Signs. No sign of any nature (other than a name and address sign, not exceeding 9" x 30" in size) shall be permitted on any Lot; provided, however, that one sign of not more than five square feet may be temporarily erected or placed on a Lot for the purpose of advertising the Lot for sale or rent; and provided further the Declarant or its designee or assignee may erect any signs during construction. These restrictions shall not apply to the Association in furtherance of its powers and purposes herein set forth.
- (l) Utility Easements. There is hereby created a blanket easement upon, across, over and under the Open Space for ingress, egress, installation, replacing, repairing and maintaining all utility and service lines and systems, including, but not limited to, storm drain water, sewer, gas, telephone, electricity, television cable or communication lines and systems, etc. By virtue of this easement, it shall be expressly permissible for the providing utility or service company to install and maintain facilities and equipment, and to affix and maintain wires, circuits and conduits on, in and under roofs and exterior walls. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, or other utilities or service lines may be installed or relocated except as initially developed and approved by the Declarant or thereafter approved by the Board. This easement shall in no way affect any other recorded easements. This easement shall be limited to improvements as originally constructed and no common utility shall be permitted to pass over any improvements on the Lots and no connection line shall be permitted to pass over any improvement on the Lot other than the one it serves.

- (m) Animals. No animal or fowl, other than a reasonable number of generally recognized house or yard pets, shall be (i) maintained on any Lot covered by this Declaration and then only if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes; or (ii) permitted to make an unreasonable amount of noise, or create a nuisance. No structure for the care, housing or confinement of any animal or fowl shall be maintained so as to be Visible From Neighboring Property.
- (n) Temporary Occupancy. No temporary building, structure or vehicle of any kind shall be used as a residence, either temporary or permanent. Temporary buildings or structures used during construction periods shall be removed immediately after completion of such construction.
- (o) Trailers, Boats, Aircraft, and Motor Vehicles. No motor vehicle classified by manufacturer rating as exceeding one (1) ton, mobile home, trailer, camper shell, boat, boat trailer or hang glider or other similar equipment or vehicle may be parked, stored, maintained, constructed, reconstructed, or repaired on any Lot, street, or Open Space within the Property so as to be Visible From Neighboring Property; provided, however, the provisions of this Section do not preclude the parking in garages or on driveways of (i) pickup trucks of not more than one (1) ton capacity (with or without camper shells), provided that the height of such pickup truck and camper shall not exceed seven (7) feet, or (ii) mini motor homes or other recreation vehicles which do not exceed seven (7) feet in height or eighteen (18) feet in length, if those vehicles described in (i) and (ii) are used on a regular and recurring basis for basic transportation. No automobile, motorcycle, motor bike, motorized hang glider, or other motor vehicle shall be constructed, reconstructed or repaired on any Lot, street, or Open Space within the Property so as to be Visible From Neighboring Property, and no inoperable vehicle may be stored or parked so as to be Visible From Neighboring Property, except in the event of an emergency.
- (p) Nuisances/Construction Activities. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to a Lot and no odors or loud noises shall be permitted to arise or emit therefrom, so as to create a nuisance, render any such Property or any portion thereof or activity thereon unsanitary, unsightly, offensive or detrimental to the Lot or person in the vicinity thereof. Without limiting the generality of any of the foregoing provisions, no speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used, or placed on any such Property. No motorcycles or motor driven vehicles (except lawn maintenance equipment) shall be operated on any walkways or sidewalks within the Property. The Board in its sole discretion shall have the right to determine the existence of any violation of this Section and its determination shall be final and



enforceable as provided herein. Normal construction activities 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 periods. Supplies or building materials and construction equipment shall be stored only in such areas and in such manner as may be approved by the Architectural Committee or the Declarant.

- (q) Clothes Drying Facilities. Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any Property unless they are erected, placed and maintained exclusively within a fenced service yard or otherwise so as not to be Visible From Neighboring Property.
- (r) Mineral Exploration. No Property shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, or minerals of any kind.
- (s) Diseases and Insects. No Owner or resident shall permit any thing or condition to exist upon the Property which shall induce, breed or harbor infectious plant diseases or noxious insects.
- (t) Party Walls and Fences. The rights and duties of Owners with respect to party walls or party fences shall be as follows:
  - (1) Owners of contiguous Lots who have a party wall or party fence shall both equally have the right to use such wall or fence, provided that such use does not interfere with the use and enjoyment thereof by the other Owner.
  - (2) In the event that any party wall or party fence is damaged or destroyed through the act of an Owner, his agents, guests, or family members, it shall be the obligation of such Owner to rebuild and repair the party wall or party fence without cost to the other adjoining Lot Owner or Owners. Any dispute over an Owner's liability shall be resolved as provided in Subsection 8.1(t)(5) below.
  - (3) In the event any party wall or party fence is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time) other than by the act of an Owner, his agents, guests or family members, it shall be the joint obligation of all Owners whose Lots adjoin such wall or fence to rebuild and repair such wall or fence, such expense to be divided among the Owners in accordance with frontage of their Lot on the party wall or party fence.
  - (4) Notwithstanding anything to the contrary herein contained, there

- shall be no impairment of the structural integrity of any party wall or party fence without the prior written consent of the Board.
- (5) In the event of a dispute between Owners with respect to the construction, repair or rebuilding of a party wall or party fence or the sharing of the cost thereof, such adjoining Owners shall submit the dispute to the Board, the decision of which shall be final and enforceable.
  - (6) Each Owner shall permit the Owners of adjoining Lots, or their representatives, when reasonably required, to enter his Lot for the purpose of repairing or maintaining a party wall or fence or for the purpose of performing installations, alterations or repairs to the Property of such adjoining Owners, provided that requests for entry are made in advance and that such entry is at a time reasonably convenient to the Owner. In case of an emergency, such right of entry shall be immediate. An adjoining Owner making entry pursuant to the terms of this paragraph shall not be deemed guilty of trespass by reason of such entry.
  - (7) Surfaces of party walls or party fences which are generally accessible or viewable from only the adjoining Property may be planted against, painted, maintained and used by the adjoining Owners. If such surfaces are viewable from public streets or the Open Space, the color scheme shall not be changed without the written consent of the Architectural Committee.
  - (8) Any Lot which has a wall adjacent to the Open Space and which wall separates the Lot from the Open Space shall be considered to have a party wall with the Association and the provisions of this Section 8.1(t) apply as though the Open Space were an adjacent Lot.
  - (9) The Owners of Lots with a wall adjacent to a street, or adjoining property other than Lots or Open Space within the Property, shall be solely responsible for repair and maintenance of such walls, and if repair is necessary, the repaired wall must match the size, color, and texture of the existing adjacent walls within the Property.
  - (10) Water damage to a party wall due to sprinkler overflow or installed planters against the party wall shall be the responsibility of the party who created the damage.
- (u) Drainage Easement. There is hereby created a blanket easement for drainage of surface water runoff on, over and across the Open Space. No Owner shall obstruct, divert, alter or interfere with any portion of the

Property that results in the obstruction, diversion, alteration or interference of any drainage of surface water runoff on, over and across the Open Space. Each Owner shall at his own expense maintain the drainageways and channels on his Lot in proper condition free from obstruction.

- (v) Parking. It is the intent of the Declarant to eliminate on-street parking as much as possible. Vehicles of all Owners, residents, guests and invitees are to be kept in garages, carports, residential driveways and other parking areas designated by the Association. No vehicle which is Visible from Neighboring Property may be parked on gravel, grass, landscaped or other non-concrete areas of a Lot, or within five (5) feet of any side Lot line. Limited, short-term on-street parking will be permitted solely for the following purposes; (i) loading and unloading of non-commercial items for use on the Lot; (ii) for temporary visits by guests or invitees of an Owner that do not involve overnight parking; or (iii) for temporary parking of the Owner's vehicles for special events that do not involve overnight parking and that do not occur on a frequent or repetitive basis. The Board may remove, or cause to be removed, any unauthorized vehicle at the expense of the owner thereof in any manner consistent with applicable law.
- (w) Right of Entry. During reasonable hours and upon reasonable notice to the Owner or resident of a Lot, any Member or authorized representative of the Architectural Committee or the Board shall have the right to enter upon and inspect any Lot or improvements thereon, except for the interior portions of any completed improvements, to determine if the improvements are in compliance with this Declaration. Any such persons shall not be deemed guilty of trespass by reason of such entry.
- (x) Health, Safety and Welfare. In the event uses, activities and facilities are deemed by the Board to be a nuisance or to adversely affect the health, safety or welfare of Owners or residents, the Board may make rules restricting or regulating their presence as part of the Association Rules or may direct the Architectural Committee to make rules governing their presence on Lots as part of the Architectural Committee Rules.
- (y) Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant, or its duly authorized agents, of improvements or signs necessary or convenient to the development or sale of Lots within the Property.

Section 8.2 Permitted Uses, Restrictions and Maintenance - Open Space. The permitted uses and restrictions for the Open Space shall be as follows:

- (a) Permitted Uses. Except as otherwise provided herein, the Open Space shall be used in general for the exclusive benefit of the Owners, for the furnishing of services and facilities for which the same are reasonably

intended and for the enjoyment to be derived from such reasonable and proper use, without hindering the exercise of or encroaching upon the right of any other Owner to utilize the Open Space, provided that no unlawful use shall be permitted.

(b) Restricted Uses.

- (1) The Open Space shall not be used by Owners for storage of supplies, material or personal property of any kind.
- (2) Except as otherwise provided herein, no activity shall be carried on nor condition maintained by any Owner upon the Open Space which spoils the appearance of the Property or hinders or encroaches upon the right of any other Owner to utilize the Open Space as reasonably intended.

(c) Maintenance by Association. The Association has the right and may, at any time, as to any Open Space conveyed, leased, or transferred to it, or otherwise placed under its jurisdiction, in the discretion of the Board, without any approval of the Owners being required:

- (1) Maintain the plantings on all Open Space. For this purpose, Declarant and the Association shall have the right, at any time, to plant, replace, maintain and cultivate landscaping, shrubs, trees, and plantings on any Open Space and on such easements over an Owner's Lot as may have been granted to Declarant or the Association, regardless of whether any Owner or the Association is responsible hereunder for maintenance of such areas. No Owner shall remove, alter, injure or interfere in any way with any landscaping, shrubs, trees, grass or plantings placed upon any Open Space without the prior written consent of Declarant or the Association. Declarant and the Association shall have the right to enter upon or cross over any Lot, at any reasonable time, for the purpose of planting, replacing, maintaining or cultivating such landscaping, shrubs, trees, grass or plantings and shall not be liable for trespass for so doing;
- (2) Reconstruct, repair, replace or refinish any improvement or portion thereof upon the Open Space or the above described easement areas (to the extent that such work is not the responsibility of any governmental entity or utility);
- (3) Construct, reconstruct, repair, replace or refinish any road improvement or surface upon any portion of such area used as a road, street, walk, and parking area (to the extent that such work is not done by a governmental entity or utility, if any such entity is

responsible for the maintenance and upkeep of such area);

- (4) Replace injured and diseased trees or other vegetation on all Open Space, and plant trees, shrubs and ground cover to the extent that the Board deems necessary or advisable;
- (5) Place and maintain upon the Open Space such signs, markers and lights as the Board may deem appropriate for the proper identification, use and regulation thereof;
- (6) Remove all papers, debris, filth and refuse from the Open Space and wash or sweep paved areas as required, and clean and relamp lighting fixtures as needed;
- (7) Repaint striping, markers, directional signs, and similar identification or safety devices as necessary;
- (8) Pay all real and personal taxes and assessments on the Open Space;
- (9) Pay all electrical, water, gas and other utility charges or fees for services furnished to the Open Space;
- (10) Pay for and keep in force at the Association's expense, adequate insurance against liability incurred as a result of death or injury to persons or damage to property on the Open Space. Such insurance shall be with companies acceptable to the Board in amounts and with adequate limits of liability desired by the Board or required of the Association pursuant to any other recorded document affecting the Property, such insurance to name the Association as named insured;
- (11) Do all such other and further acts which the Board deems necessary to preserve and protect the Open Space and the beauty thereof, and to maintain or increase the value of the community in accordance with the general purposes specified in this Declaration;
- (12) The Board shall be the sole judge as to the appropriate maintenance within the Open Space, as well as the Lots; and
- (13) Nothing herein shall be construed so as to preclude the Association from delegating its powers set forth above to a project manager or agent or to other persons, firms or corporations.

The City of Provo is not responsible for and will not accept maintenance of any private facilities or landscaped areas within this project. All

landscaping in detention areas are to be maintained by the Association. 1410 East Street is a private road and will be maintained by the Association, including the underground storm water detention system under the south end of this road.

- (d) Damage or Destruction of Open Space by Owners. In the event any Open Space is damaged or destroyed by an Owner or any of his guests, tenants, licensees, or agents, such Owner does hereby authorize the Association to repair said damaged area, and the Association shall so repair said damaged area in a good workmanlike manner in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Association, in the discretion of the Association. The amount necessary for such repairs shall, to the extent permitted under law, be paid by said Owner to the Association, and the Association may enforce collection of same in the same manner as provided elsewhere in this Declaration for collection and enforcement of assessments, including Section 6.11 hereof.
- (e) Mortgage or Conveyance of Open Space. The Open Space shall not be mortgaged or conveyed without the prior consent of Owners representing not less than two-thirds (2/3) of the authorized votes of each class of Members.

## ARTICLE IX INSURANCE

Section 9.1 Scope of Coverage. Commencing not later than the time of the first conveyance of a Lot to a Person other than the Declarant, the Association shall maintain adequate insurance for the Open Space, including liability in an amount no less than one million dollars (\$1,000,000), as well as directors and officers liability. Each Owner shall be responsible for coverage on his Lot and any improvements thereon.

Section 9.2 Certificates of Insurance. An insurer that has issued an insurance policy under this Article shall issue certificates or a memorandum of insurance to the Association and, upon request, to any Owner, mortgagee or beneficiary under a deed of trust. Any insurance obtained pursuant to this Article may not be canceled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association, each Owner, and each mortgagee or beneficiary under deed of trust to whom certificates of insurance have been issued.

Section 9.3 Repair and Replacement of Damaged or Destroyed Property. Any portion of the Common Area damaged or destroyed shall be repaired or replaced promptly by the Association unless (a) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (b) Owners owning at least eighty

percent (80%) of the Lots vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. The insurance proceeds attributable to the damaged Open Space shall be used to restore the damaged area to a condition in accordance with any state or local health or safety statute or ordinance. Any insurance proceeds remaining after repairing or replacing the damaged Open Space shall be applied to reserves for future repairs and replacements.

## ARTICLE X ALTERNATIVE DISPUTE RESOLUTION

Section 10.1 Alternative Method for Resolving Disputes. Declarant, the Association, its officers, and directors, all Owners and Members or other parties subject to this Declaration (each a "Bound Party") agree to encourage the amicable resolution of disputes involving any Bound Party without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit those claims, grievances or disputes described in Section 10.2 (collectively, "Claims") to the procedures set forth in Section 10.3.

Section 10.2 Claims. Unless specifically exempted below, all Claims arising out of or relating to the interpretation, application or enforcement of this Declaration, or the rights, obligations and duties of any Bound Party under this Declaration or relating to the design or construction of improvements on the Property shall be subject to the provisions of Section 10.3. Notwithstanding the foregoing sentence, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 10.3 (collectively "Claims Exempt from Dispute Resolution"):

- (a) any suit or action by the Association against any Bound Party for delinquent assessments or to enforce the provisions of Article VI (Covenant for Maintenance Assessments);
- (b) any suit by the Association or Declarant to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to act under and enforce the provisions of Article VII (Architectural Control) and Article VIII (Use Restrictions);
- (c) any suit between or among Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of this Declaration;
- (d) any suit in which any indispensable party is not a Bound Party; and
- (e) any suit as to which any applicable statute of limitations has expired or would expire within 180 days of giving the Notice required by Section 10.3.

Section 10.3 Mandatory Procedures.

- (a) Notice. Any Bound Party initiating a Claim ("Claimant") against any other Bound Party ("Respondent") (the Claimant and the Respondent referred to herein being individually referred to as a "Party," or collectively referred to as the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:
- (i) the nature of the Claim, including the Persons involved and Respondent's role in the Claim;
  - (ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);
  - (iii) the proposed remedy; and
  - (iv) the fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.
- (b) Negotiation and Mediation.
- (i) The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.
  - (ii) If the Parties do not resolve the Claim within 30 days after the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have an additional 30 days to submit the Claim to mediation under the auspices of an independent mediation service designated by the Association, or, if the Parties otherwise agree, to an independent agency providing dispute resolution services with substantial experience with comparable disputes.
  - (iii) If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.
  - (iv) Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within 30 days after submission of the matter to the



mediation, or within such other time as determined by the mediator or agreed to by the Parties, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

- (v) Each Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally all charges rendered by the mediator. If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with this Section 10.3 and any Party thereafter fails to abide by the terms of such agreement, then any other Party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section 10.3. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including, without limitation, attorneys' fees and court costs.
- (c) Termination of Mediation. Upon Termination of Mediation, Claimant shall thereafter be entitled to submit the matter to binding arbitration. Any arbitration proceeding will (i) proceed in Provo, Utah; (ii) be governed by the Federal Arbitration Act (Title 9 of the United States Code); and (iii) be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). Any arbitration proceeding will be before a single arbitrator. The parties shall use reasonable efforts to agree upon a single arbitrator within ten (10) days after written notice from one party to the other requesting arbitration. If the parties are unable to agree upon an arbitrator within such ten (10) day period, at any time thereafter either party may require that the arbitrator be selected according to the Commercial Arbitration Rules of the AAA. The arbitrator will be a neutral attorney who practices in the area of commercial real estate or business law. The arbitrator will determine whether or not an issue is arbitrable and will give effect to the statutes of limitation in determining any Claim. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. In any arbitration proceeding, the arbitrator will decide (by documents only or with a hearing at the arbitrator's discretion) any pre-hearing motions which are similar to motions to dismiss for failure to state a claim or motions for summary adjudication. In any arbitration proceeding, discovery will be permitted and will be governed by the Utah Rules of Civil Procedure. All discovery must be completed no later than 20 days before the hearing date and within 180 days of the commencement of arbitration proceedings. Any requests for an extension of the discovery periods, or any discovery disputes, will be subject to final

determination by the arbitrator upon a showing that the request for discovery is essential for the party's presentation and that no alternative means for obtaining information is available. The arbitrator shall award costs and expenses of the arbitration proceeding in accordance with the provisions of this Declaration. The laws of the State of Utah shall apply in any arbitration proceeding, without regard to its conflict of laws rules.

Section 10.4 Member Approval of Association Claims and Actions.

Notwithstanding anything contained herein to the contrary and in addition to any requirements prescribed by law, the Association may not submit a Claim against Declarant or an affiliate of Declarant to binding arbitration upon Termination of Mediation, and (if the provisions of Section 10.3 do not apply) may not file any action against Declarant or an affiliate of Declarant arising out of or related to the design, construction, condition or sale of any part of the Property or any improvements thereon, until all of the following have occurred:

- (a) In advance of the meeting described in Subsection 10.4(b) below, the Board has provided full disclosure in writing to all Members of all material information relating to the Claim or action. The material information shall include, without limitation, a statement that describes the manner in which the action will be funded and a statement describing any demands, notices, offers to settle or responses to offers to settle made either by the Association or the Declarant or its affiliate, if applicable.
- (b) The Association has held a duly called meeting of its Members and the Board, at which a majority of all Class A Members (not merely a majority of those Class A Members voting in person or by proxy), voting in person or by proxy, authorize the submittal of the Claim to arbitration or the filing of the action, as applicable.
- (c) The Board has authorized the submittal of the Claim to arbitration or the filing of the action, as applicable.

Section 10.5 WAIVER. DECLARANT AND, BY ACCEPTING A DEED FOR THE ASSOCIATION PROPERTY OR A RESIDENTIAL UNIT, AS THE CASE MAY BE, THE ASSOCIATION AND EACH OWNER AGREE TO HAVE ANY DISPUTE RESOLVED ACCORDING TO THE PROVISIONS OF THIS ARTICLE X AND WAIVE THEIR RESPECTIVE RIGHTS TO PURSUE ANY DISPUTE IN ANY MANNER OTHER THAN AS PROVIDED IN THIS ARTICLE X. SUCH PARTIES ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL DISPUTES AS PROVIDED IN THIS ARTICLE X, THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH DISPUTES TRIED BEFORE A COURT OR JURY.

ARTICLE XI  
MISCELLANEOUS

Section 11.1 The Declaration. By acceptance of a deed or by acquiring any

ownership interest in any portion of the Property, each Owner, his heirs, representatives, successors, transferees and assigns, binds himself, his heirs, representatives, successors, transferees and assigns, to restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such Owner by so doing hereby acknowledges that this Declaration sets forth a general scheme for the improvement and development of the Property and thereby evidences his interest that all the restrictions, conditions, covenants, rules and regulations contained herein shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, each such Owner fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various future Owners.

Section 11.2 Enforcement. Subject to Article X of this Declaration, the Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In the event any portion of any Lot is maintained so as to present a public or private nuisance, or substantially detract from or affect the appearance or quality of any surrounding Lot, or is used in a manner which violates this Declaration, or in the event the Owner or resident of any Lot is failing to perform its obligation under this Declaration or the Architectural Committee Rules, the Association or any Owner(s) may give notice to the Owner of such Lot that unless corrective action is taken within the time frame as stated in the notice, the Association or such Owner may take, at such Owner's cost, whatever action is appropriate to complete compliance including, without limitation, appropriate legal action. Charges incurred by the Association or such Owner(s) in making any repairs or maintenance shall be borne by the violating Owner and shall be paid to the Association or such Owner(s), as appropriate, on demand with interest at twelve percent (12%) per annum accruing from the date said charges are incurred until paid in full. Any sum not paid hereunder by the violating Owner shall be treated as an assessment and collected in accordance with the procedures provided in Article VI.

Section 11.3 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 11.4 Term. The covenants and restrictions of this Declaration shall run with and bind the land for a term of thirty (30) years from the date this Declaration is recorded, and thereafter shall automatically extend for consecutive periods of ten (10) years each, unless there is an affirmative vote, not more than one (1) year prior to the date otherwise scheduled for commencement of the next extension of the term of this Declaration, not to renew this Declaration by a vote of three-quarters (3/4) of the Owners.

Section 11.5 Amendment. This Declaration may be amended at any time only by the affirmative vote or written consent, or any combination thereof, of Owners

representing not less than two-thirds (2/3) of the authorized votes of each class of Members; except that the Declarant or Board may amend this Declaration as may be requested by the FHA, VA, FHLMC or FNMA, or any government agency which requests such amendment as a condition of approving this Declaration or any federally chartered lending institution which requests such amendment as a condition to lending funds upon the security of any Lot, or as may be appropriate in the event of any such requested amendment that deletes, diminishes or alters Declarant's control of the Association and its activities, to permit the Declarant to adopt other and different control provisions. Any amendment must be recorded.

Section 11.6 Notices. Notices provided for in this Declaration shall be in writing and shall be addressed to the last known address of the Lot Owner in the files of the Association. Notices shall be deemed delivered when mailed by United States first class, registered or certified mail addressed to the Lot Owner at such address or when delivered in person to such Owner. Owners must notify the Association of any changes of mailing address or change in ownership of the Lot.

Section 11.7 Condemnation. Upon receipt of notice of intention or notice of proceedings whereby all or any part of the Property is to be taken by any governmental body by exercise of the power of condemnation or eminent domain, all Owners and first mortgagees shall be immediately notified by the Association thereof. The Association shall represent the Owners in any condemnation or eminent domain proceeding authority for acquisition of any part of the Open Space of the Property, and every Owner appoints the Association as his/her attorney-in-fact for this purpose. The entire award made as compensation for such taking of Open Space, including but not limited to any amount awarded as severance damages, or the entire amount received and paid in anticipation and settlement for such taking, after deducting therefrom, in each case, reasonable and necessary costs and expenses, including but not limited to attorneys' fees, appraisers' fees and court costs (which net amount shall hereinafter be referred to as the "Award"), shall be paid to the Association as trustee for the use and benefit of any Owners and their first mortgagees as their interests may appear. The Association shall, as it is practicable, cause the Award to be utilized for the purpose of repairing and restoring the Property, including, if the Association deems it necessary or desirable, the replacement of any improvements so taken or conveyed.

In the event of any taking of any Lot in the Property by eminent domain, the Owner of such Lot shall be entitled to receive the award for such taking, and after acceptance thereof, the Lot Owner and all of Lot Owners' mortgagees shall be divested of all interest in the Property if such Owner shall vacate Lot Owners' Lot as a result of such taking. The remaining Owners shall decide by majority vote whether to rebuild or repair the Property or take other action. The remaining portion of the Property shall be resurveyed, if necessary, and this Declaration shall be amended to reflect such taking. In the event of a taking by eminent domain of more than one Lot at the same time, the Association shall participate in the negotiations and shall propose the method of division of the proceeds of condemnation where Lots are not valued separately by the condemning authority or by the court. The Association should give careful

consideration of the allocation of common interests in the Open Space in determining how to divide lump sum proceeds of condemnation. In the event any Lot Owner disagrees with the proposed allocation, such Lot Owner may submit such matter to the procedures set forth in Section 10.3.

Section 11.8 Waiver; Remedies Cumulative. No failure or delay on the part of any Person in exercising any right, power or privilege hereunder and no course of dealing between or among the Persons subject hereto shall operate as a waiver of any provision hereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other right, power or privilege. Subject to the limitations of Article X hereof, the rights and remedies herein expressly provided are cumulative and not exclusive of any rights or remedies which any Person subject hereto would otherwise have. No notice to or demand upon any Person in any case shall entitle such Person to any other or further notice or demand in similar or other circumstances or constitute a waiver of rights to any other or further action in any circumstances.

Section 11.9 Topical Heading. The marginal or topical headings of the paragraphs contained in this Declaration are for convenience only and do not define, limit or construe the contents of the paragraphs of this Declaration.

Section 11.10 Prior Approval. As long as there is a Class B membership, then if this Declaration has previously been approved by the Federal Housing Administration or the Veterans Administration, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, dedication of Open Space, and the amendment of this Declaration.

**EXHIBIT "A"**  
**BOUNDARY DESCRIPTION OF PHASE F**

A parcel of land located in the Southwest  $\frac{1}{4}$  of Section 8 and the Northwest  $\frac{1}{4}$  of Section 17, Township 7 South, Range 3 East, S.L.B & M.; more particularly described as follows:

Commencing at a found brass cap marking the Southwest corner of said Section 8; thence North  $89^{\circ}03'02''$  East along the Section line a distance of 687.22 feet; thence North a distance of 362.68 feet to the real point of beginning.

Thence North  $33^{\circ}28'15''$  West a distance of 68.11 feet; thence North  $59^{\circ}38'02''$  West a distance of 54.43 feet; thence North  $39^{\circ}41'04''$  West a distance of 12.42 feet; thence North  $27^{\circ}35'01''$  West a distance of 53.08 feet; thence North  $34^{\circ}55'45''$  West a distance of 55.40 feet; thence North  $53^{\circ}34'43''$  West a distance of 90.68 feet; thence North  $24^{\circ}38'43''$  West a distance of 10.56 feet; thence North  $87^{\circ}09'03''$  a distance of 18.47 feet; thence North  $84^{\circ}37'36''$  East a distance of 35.31 feet; thence South  $85^{\circ}00'44''$  East a distance of 249.07 feet; thence North  $04^{\circ}11'15''$  East a distance of 90.21 feet; thence South  $86^{\circ}47'54''$  East a distance of 222.33 feet; thence South  $85^{\circ}16'23''$  East a distance of 76.21 feet; thence North  $03^{\circ}12'25''$  East a distance of 2.03 feet; thence South  $86^{\circ}47'54''$  East a distance of 268.10 feet; thence South  $03^{\circ}40'14''$  West a distance of 111.10 feet; thence South  $01^{\circ}01'37''$  East a distance of 375.24 feet; thence North  $50^{\circ}21'45''$  West a distance of 30.94 feet; thence North  $89^{\circ}56'57''$  West a distance of 40.48 feet; thence North  $87^{\circ}11'11''$  West a distance of 53.67 feet; thence North  $74^{\circ}04'44''$  West a distance of 209.28 feet; thence North  $45^{\circ}18'28''$  a distance of 87.39 feet; thence North  $80^{\circ}24'56''$  West a distance of 203.67 feet; thence North  $64^{\circ}35'20''$  West a distance of 47.04 feet; thence West a distance of 22.92 feet to the point of beginning containing 6.44 acres.

IN WITNESS WHEREOF, DRHI, INC., an Utah corporation, as Declarant, has caused its corporate name to be signed and its corporate seal to be affixed by the undersigned officer thereunto duly authorized this 25 day of Sept, 2002.

DRHI, INC.

By: Rustin J Tallent V.P.

Its: V.P.

STATE OF UTAH )

County of Utah ) s.s.

On this 25 day of SEPT, 2002, before me, the undersigned Notary Public, personally appeared Boyd A. Martin, who acknowledged himself to be the Assistant Secretary of the Salt Lake Division of DRHI, INC., an Utah corporation, and that as such officer being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation.

Notary Public

Connie Quintana

My Commission Expires:

6/28/03

