

After recording return to:

River's End, L.C.
2159 South 700 East
Salt Lake City, UT 84106

Ent 235857 Bk 0516 Pg 0407-0432
ELIZABETH PARCELL, Recorder
WASATCH COUNTY CORPORATION
2001 AUG 10 3:26pm Fee 81.00 MWC
FOR RIVERS END LC

**DECLARATION OF PROTECTIVE EASEMENTS,
COVENANTS, CONDITIONS AND RESTRICTIONS
(Including Owner Association Bylaws)**

WINTERTON FARMS AT CHARLESTON

Charleston, Wasatch County, Utah

This Declaration of Protective Easements, Covenants, Conditions and Restrictions (the "Declaration") is made this 10th day of AUGUST, 2001, by **River's End, L.C.**, a Utah limited liability company, in its capacity as the owner and developer of Winterton Farms At Charleston, a rural subdivision ("the Development") in Charleston, Wasatch County, Utah.

ARTICLE I

PURPOSES, PROPERTY AND EFFECTUATION

1.1 **Purposes.** The purposes of this Declaration are to provide for the preservation of the values of the Lots and Residences within the Development to the benefit of the Owners and the surrounding environs; and in furtherance thereof to provide for the:

- (a) integrity of architectural and landscaping design for Residences, Outbuildings and Lots, including preservation and protection of Lot open space areas and View Corridors;
- (b) maintenance, preservation, and replacement, as needed, of Common Elements and Facilities; and
- (c) preservation of the natural beauty, views, and surroundings of the Development in order to enhance the quality of life therein and maintain its unique character as a rural subdivision through the judicious use and observance of the rules of good plant and animal husbandry.

1.2 **Property Submission.** The Property which is and shall be held, transferred, sold, conveyed, and occupied subject to the provisions of this Declaration consists of the real property located in the City of Charleston, Wasatch County, State of Utah described in **Exhibit A**, attached hereto and made a part hereof:

TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying such real property, whether or not the same are reflected on the Plat.

RESERVING UNTO DECLARANT, however, such easements and rights of ingress and egress over, across, through, and under the such real property and any improvements (including buildings) now or hereafter constructed thereon as may be reasonably necessary for Declarant (in a manner which is reasonable and not inconsistent with the provisions of this Declaration) to improve portions of such real property with such roads, fences, improvements, facilities, or landscaping designed for the use and enjoyment of all the Owners as Declarant may reasonably determine to be appropriate. If, pursuant to the foregoing reservations, such real property or any improvement thereon is traversed or partially occupied by a permanent improvement or utility line, a perpetual easement for such improvement or utility line shall exist. With the exception of such perpetual easements, the reservations hereby effected shall, unless sooner terminated in accordance with their terms, expire 10 years after the date on which this Declaration is recorded in the Public Records.

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 reservations and exclusions; all mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described real property or any portion thereof, including, without limitation, any mortgage (and nothing in this paragraph shall be deemed to modify or amend such mortgage); all visible easements and rights-of-way; all easements and rights-of-way, encroachments, or discrepancies shown on or revealed by the Plat or otherwise existing; an easement for each and every pipe, line, cable, wire, utility line, or similar facility which traverses or partially occupies the said real property at such time as construction of all Development improvements is complete; and all easements necessary for ingress to, egress from, maintenance of, and replacement of all such pipes, lines, cable, wires, utility lines, and similar facilities; **AND TO EACH OF THE COVENANTS, EASEMENTS, CONDITIONS, AND RESTRICTIONS CONTAINED IN THIS DECLARATION.**

1.3 **Division into Lots.** The Development is hereby divided into 20 Lots as set forth and described on the Plat, each with appurtenant and equal rights and easements of use and enjoyment in and to the Common Elements, as well as appurtenant obligations pertaining to Assessments, maintenance, and similar matters, as set forth in this Declaration. The further subdivision of any Lot is prohibited.

1.4 **Effectuation.** From and after the effective date hereof:

(a) Each part of the Development and each Lot lying within the boundaries of the Development shall constitute constituent parts of a single rural residential subdivision;

(b) The Declaration for the Development shall consist of this document as the same may be modified or amended from time to time in accordance with the provisions hereof; and

(c) The Plat of the Development shall consist of the instrument which is identified as such in ARTICLE II hereof and recorded in the Public Records, as the same may be amended from time to time.

ARTICLE II

DEFINITIONS

When used throughout this Declaration, each of the following terms shall have the meanings indicated:

Areas of Association Responsibility shall mean (i) all Common Elements; (ii) all real property within the Development and the improvements situated thereon which the Association is obligated to maintain, repair, and replace pursuant to the terms of this Declaration, or the terms of another document executed by the Association and recorded in the Public Records; (iii) all real property within the Development located within dedicated road rights-of-way, including any improvements situated thereon with respect to which the City of Charleston has not accepted responsibility for maintenance, but only until such time as it has accepted responsibility therefor, if ever, and (iv) the Irrigation System.

Articles shall mean and refer to the Articles of Incorporation of the Association, as amended from time to time, which shall be filed in the Office of the Division of Corporations and Commercial Code, State of Utah, prior to the conveyance of the first Lot by Declarant.

Assessment shall mean the amount which is to be levied and assessed against each Owner and the Owner's Lot (whether an Annual, Special or Specific Assessment, as described in the Bylaws) and paid to the Association for Common Expenses and other expenses.

Association shall mean Winterton Farms Owners Association, a Utah nonprofit corporation, its successors and assigns, which shall own and manage the Development's Common Elements and Facilities. Each Owner shall hold an appurtenant membership interest in the Association.

Board shall mean the Board of Trustees (or Directors) of the Association.

Bylaws shall mean and refer to the Bylaws of the Association as set forth and embodied in this Declaration in ARTICLES IX, X and XI.

Common Elements and Facilities or Common Elements shall mean those portions of the Development designated on the Plat as landscape easements; trail and public utility easements; waterline easements; irrigation lines; and any and all landscaping, improvements, and the like thereon, including all easements appurtenant thereto. The Association may, from time to time, designate other real property interests and any personal property used in the care and maintenance of the Common Elements to also be Common Elements and Facilities.

Common Expenses shall mean those sums expended by the Association in carrying out its duties and responsibilities in the Areas of Association Responsibility.

DRC shall mean the Design Review Committee referred to in Section 10.3.

Declarant shall mean River's End, L.C., a Utah limited liability company, its successors and assigns, if any, as owner and developer of the Development.

Declaration shall mean this Declaration of Protective Easements, Covenants, Conditions and Restrictions for Winterton Farms At Charleston, as the same may be amended or restated from time to time.

Development shall mean the rural subdivision development known as Winterton Farms At Charleston as described in this Declaration and on the Plat, and as it exists at any time.

Irrigation System shall mean the underground piping system which delivers irrigation water to each Lot. Such system is to be installed by Declarant within the Development and will thereafter be administered through the Charleston Irrigation Company.

Lot shall mean and refer to any of the separately numbered, individually described Lots within the Development, as designated on the Plat, intended for single family residential use.

Managing Agent shall mean any person or entity appointed or employed as Managing Agent by the Association.

Mortgage shall mean a recorded first mortgage or first deed of trust encumbering a Lot which has priority over all other mortgages and deeds of trust encumbering the same Lot; and **Mortgagee** shall mean the mortgagee or beneficiary named in any Mortgage.

Outbuildings shall mean structures or improvements other than a Residence constructed on any Lot, such as a barn, animal shelter, tack room, auxiliary garage, greenhouse, recreational amenity, or the like, that are accessory to the main Residence on such Lot.

Owner shall mean any person who is the owner of record (as reflected in the Public Records) of a fee or undivided fee interest in any Lot, and any contract purchaser of any Lot. Declarant shall be an Owner with respect to each Lot owned by it. Notwithstanding any applicable theory relating to mortgages, no Mortgagee, nor any other mortgagee, trustee or beneficiary of a deed of trust shall be an Owner unless such party acquires fee title pursuant to foreclosure, or sale, or conveyance in lieu thereof. Multiple owners of a particular Lot shall be jointly and severally liable as to all responsibilities of an Owner.

Plat shall mean and refer to the subdivision plat of the Development entitled **Winterton Farms At Charleston, Charleston, Wasatch County, Utah**, prepared and certified to by Francis D. Eickbush, a registered Utah land surveyor holding Certificate No. 317443, executed and acknowledged by Declarant, accepted by the City of Charleston, and recorded in the of Public Records concurrently with this Declaration.

Public Records shall mean and refer to the Office of the Wasatch County Recorder, Heber City, Utah.

Rules and Regulations shall mean and refer to those Rules and Regulations authorized, adopted and promulgated to the Owners from time to time by the Board pursuant to the provisions of Section 10.4.

Single Family Residence or Residence shall mean a residential structure situated upon a Lot, designed and intended for use and occupancy as a residential dwelling by a group of one or more persons each related to the other by blood, marriage or legal adoption, or by a group of not more than three persons, not all so related, who maintain a common household therein.

Trustee or Director shall mean a member of the Board.

View Corridor shall mean the width (not to exceed 150 feet) of the residential living area on any Lot when looking from the center of such width in a south/southwesterly direction towards Mt. Timpanogas, the highest point of Mt. Timpanogas being aligned with the center of such living area's width measurement.

ARTICLE III

BUILDING AND LAND USE

3.1 **Residential Use.** Lots in the Development are zoned for Single Family Residence use. There may be erected on any Lot not more than one Residence, plus such Outbuildings as are accessory, auxiliary or incidental thereto. No Lot or any part thereof shall be used for any business purposes whatsoever, except as provided in Section 6.1.

3.2 **Lot Plan.** In order to preserve and protect open space areas on each Lot, no more than thirty percent (30 %) of the total Lot acreage shall be devoted to developed areas and structures, and then clustered in no more than three separate areas of the Lot. For example, a Residence, garage and appurtenant landscaping in one area; a barn, tack room, animal and feed shelter in another; and recreational amenities (swimming pool, tennis court, etc.) in a third. Such separate areas shall be clearly identified on all plans and specifications, including landscape and irrigation plans and specifications, submitted by a Lot owner to the DRC for approval.

3.3 **Parking.** Automobiles of the private passenger class, trucks of the pickup class, and horse trailers may be parked on the side of any Lot, provided that any such parking shall comply with the same set back requirements as the residential dwellings. Campers, larger trucks than pickups, equipment, and boats may be parked in the back of any Lot, provided that any such parking area shall be attractively screened or concealed from neighboring Lots, roads or streets, and then only with the prior approval of the DRC. Motor vehicles under repair, or not in operating condition, shall not be placed or permitted to remain on any street, or any portion of any Lot in the Development unless it is within an enclosed garage or barn structure.

3.4 **General Upkeep and Maintenance.** Clothes lines, yard or tack equipment, garbage and trash containers, building supplies, and service yards shall be kept screened by adequate planting or fencing to conceal them from view from an adjacent Lot or street. All rubbish, trash and garbage shall be removed from Lots and shall not be allowed to accumulate thereon. Owners shall keep their Lots reasonably clear of weeds and trash and all improvements thereon in good condition and repair at all times, so as to not cause any unsightly or dangerous conditions or fire hazards. Violation of the provisions of this Section 3.4 by an Owner may cause the Association to take such remedial action as the Board deems warranted under the circumstances and to assess the Owner and his Lot a Specific Assessment pursuant to the provisions of Section 11.11.

3.5 **Sewage.** Bathrooms, toilets and other sanitary convenience receptacles shall be connected to septic tanks and cesspools with leach fields constructed in accordance with sound engineering practices, safety and health standards of the Wasatch County Board of Health. Outside portable lavatories, outside toilets or open plumbing is prohibited.

3.6 **Tanks.** No elevated tanks of any kind shall be erected, placed or permitted on any Lot. Tanks, including tanks for storing fuel, must be buried, have the appropriate governmental permits, and be approved by the DRC.

3.7 **Animal Privileges.** Subject to the laws, ordinances, health codes, rules, and regulations of the applicable governmental jurisdiction, the Development is, and shall remain, a multi-purpose rural subdivision intended for, among other things, the enjoyment of equestrian activities, including the breeding and raising of horses on a small, private, and non-commercial scale. Nevertheless:

(a) On each Lot, all animals (large and small), including dogs, and any farm or exotic birds, must be kept within a fenced area, encaged or otherwise controlled and not be allowed to wander off or fly about.

(b) Commercial breeding, raising, and/or boarding of any animals or birds is prohibited.

(c) The care and maintenance of all animals and birds kept on any Lot, shall be performed by Lot Owners in a clean, neat, orderly fashion and manner and in accordance with prevailing customs and methods.

(d) The physical facilities in which these animals are sheltered, or the land area on which they are contained, shall also be cleaned and maintained regularly by the Lot Owner in order to minimize odors, maintain a clean appearance, and not become a nuisance to the remaining Lot Owners or other neighbors.

(e) The recommended number of large animals per Lot is two per irrigated acre of pasture area in order to ensure that such areas maintain vegetation growth, are not overgrazed, and do not become sources for dust generation..

3.8 **Construction.** All structures erected in the Development must be of new construction. Aluminum siding shall not be permitted on any Single Family Residence, but may be used on certain Outbuildings as approved by the DRC.

3.9 **Minimum Living Area.** All Single Family Residences constructed within the Development shall contain a minimum living area of 3,000 square feet and a maximum thereof not to exceed 15,000 square feet, exclusive of open porches, decks, or attached garages.

3.10 **Garages.** Garages shall have doors that will enclose the contents thereof. No carports shall be permitted (as opposed to "breezeways" connecting some structures).

3.11 **DRC Approvals Required.** Except as may otherwise be provided herein, no Single Family Residence, Outbuilding, fence or other structure shall be constructed or moved within the

Development without having first obtained the prior written approval of design, location and materials by the DRC pursuant to the provisions of ARTICLE V.

3.12 Commencement of Construction. No Outbuildings or other structure shall be erected on any Lot until construction thereon of the primary Residence shall have been commenced. Once construction has been commenced on the Residence, it shall be pursued expeditiously to completion within 18 months.

3.13 Nonresidential Structures. No detached, stand-alone garage or any other Outbuilding, mobile home, motor vehicle, or temporary structure of any kind shall be used either temporarily or permanently for human habitation on any Lot. All structures shall be within the setback and height requirements set forth herein.

3.14 Setback and Height Restrictions. All Single Family Residences and Outbuildings constructed on any Lot shall conform to the setback restrictions imposed by the zoning ordinances of the City of Charleston, or those required by this Section 3.14, whichever imposes the greater distance as to setbacks. Height restriction shall be 35 feet from natural grade. It is the intent of Declarant that contiguous Lot Owners work towards the clustering of Outbuildings to promote more open space areas within a Lot's boundaries as well as shared open areas between Lots, and to preserve the View Corridors of all Lots.

(a) **Residences.** Setbacks shall be at least 30 feet from side, rear and front Lot lines, except that for areas where a Lot is less than 250 feet in width, the side Lot setback shall be at least 25 feet.

(b) **Barns and Stables.** Setbacks shall be at least 100 feet from any Residence structure located on the same or an adjacent Lot, and shall have side Lot setbacks of at least 70 feet.

(c) **Other Outbuildings.** If within the View Corridor of a contiguous Lot, the side Lot setback shall be at least 50 feet. Outbuildings not within the View Corridor of a contiguous Lot shall have setbacks of at least 30 feet.

(d) **Variances.** An Owner may apply to the DRC for a variance reduction or waiver of setback requirements for Outbuildings (i) if the contiguous Lot Owner agrees in writing; (ii) if such reduction involves the excess over the minimum setback imposed by the City of Charleston's zoning ordinances and such reduction would have minimal impact; and (iii) if a contiguous Lot Owner has built or is building his Residence and has established his View Corridor. The intent of granting any such variances is to provide incentives for clustering Outbuildings on a Lot and to not withhold reductions needlessly to simply add to already adequate space.

3.15 Perimeter Fences. Declarant has or will install uniform perimeter fencing around each Lot, the cost of which is included in the purchase price of a Lot. On those Lots with trail easements, the perimeter fence will be placed 10 feet within a Lot's line. Perimeter fencing shall remain uniform as to appearance and material and, once installed, is the responsibility of each Lot Owner to care for and maintain. Fences on shared Lot lines shall be deemed to be party fences except as between Lots 5 and 6, and 12 and 13, on each of which Lots a fence shall be placed along the easement line within such Lot's line to accommodate the respective shared easement or easements between such Lots as reflected on the Plat.

3.16 **Party Fences.** The rights and duties of Owners with respect to a party fence between Lots shall be as follows:

(a) A party fence shall be the obligation of the Owners whose Lots adjoin such party fence to maintain and repair at their joint expense, such expenses to be allocated between them.

(b) The Owners of contiguous Lots with a party fence shall both have equal rights to use such fence, provided that such use by one Owner does not interfere with the use and enjoyment of the same by the other Owner.

(c) In the event that any party fence is damaged or destroyed through the act of an Owner or any of his agents, invitees or members of his family (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner to rebuild and repair the party fence without cost to the Owner of the adjoining Lot. Any liability imposed on an Owner hereunder shall not prevent the Owner from seeking indemnity therefore from the persons causing such damage.

(d) In the event any party fence is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), other than by the act of an adjoining Owner, his agents, invitees or family, it shall be the obligation of both Owners whose Lots adjoin such party fence to repair it at their joint expense, such expense to be allocated between them.

(e) There shall be no impairment of the structural integrity of any party fence without the prior consent of the Owners of any interest therein.

(f) In the event of a dispute between Owners with respect to the construction, repair, or rebuilding of a party fence, or with respect to the sharing of the cost thereof, such adjoining Owners shall submit the dispute to the DRC, the decision of which shall be binding.

3.17 **Interior Fences; Materials.** It is recommended (but is not mandatory) that fences and corrals constructed by an Owner for use within the confines of the Owner's Lot for the containment or shelter of animals, or side yard fences shall be of the same material as the perimeter fencing. Chain link fences may be used to contain small farm animals and birds only, but shall not be used as, or in conjunction with, perimeter or party fences. No fencing of any kind of barbed wire shall be used.

ARTICLE IV

IRRIGATION

4.1 **Charleston Irrigation Company.** Declarant shall provide to each Lot access to the pressurized irrigation system owned and operated by Charleston Irrigation Company.

4.2 **Lot Irrigation System Plan.** As part of an Owner's submission to the DRC of plans and specification for construction of a Residence and Outbuildings on the Owner's Lot, the Owner shall also submit plans and specifications for the Lot's Irrigation System.

4.3 **Rules and Regulations.** Each Owner shall be subject to the rules and regulations of the Charleston Irrigation Company in all matters pertaining to the Owner's Lot and its access to the Irrigation System, including the payment of water fees.

ARTICLE V

DESIGN REVIEW

5.1 **Excavating or Grading.** No excavation or grading work shall be performed on any Lot without prior written approval of the DRC. The grading of any Lot must conform to the requirements set forth in Section 3.2.

5.2 **Lot Improvement Plans.** Owners shall submit to the DRC complete plans and specifications of proposed Single Family Residences, Outbuildings, landscaping and irrigation systems, and the like, as well as for any additions, alterations, repairs, remodeling, changes or other work which in any way alters the exterior appearance of a Lot or any improvements located thereon. Owners shall also submit any additional information requested by the DRC. Submittals shall be made in two copies, together with any fee required pursuant to Section 5.7. The approval, denial, recommendations, suggestions or other comments of the DRC shall be noted upon or attached to each copy, one of which copies shall be retained by the DRC and the other returned to the Owner for appropriate action.

5.3 **Disapproval of Plans.** The DRC may disapprove plans and specification for any construction, installation, addition, alteration, repair, change or other work (collectively referred to as "construction work") which must be approved by it pursuant to this ARTICLE V if the DRC determines, in its sole and absolute discretion, that the proposed construction work: (a) will violate any provision of this Declaration; (b) does not comply with any DRC rule; (c) is not in harmony with existing improvements in the Development or with improvements previously approved by the DRC, but not yet constructed; (d) is not aesthetically acceptable; or (e) is otherwise not in accord with the general plan for the Development as it has evolved to such date.

5.4 **Plan Approval; Changes.** Upon receipt of approval from the DRC, the Owner shall proceed expeditiously to perform such work as approved. Any change, deletion or addition to the plans and specifications already approved by the DRC must be submitted to it anew and approved in writing.

5.5 **Default Approval.** In the event complete plans, specifications and fees are submitted as required but are not acted upon within 30 days from the receipt thereof by the DRC, then approval shall be deemed given; provided, however, that no construction work may be done pursuant to the provisions of this Section 5.5 which conflicts with any specifically delineated restrictions contained in this Declaration; and, provided further, that no such approval pursuant to this Section 5.5 shall be deemed a waiver of the DRC's right to withhold approval of any similar type work subsequently submitted for approval.

5.6 **Governmental Approvals.** The approvals required of the DRC pursuant to this Declaration shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state, or local statute, ordinance, rule, or regulation.

5.7 **Fees.** The DRC shall have the right to charge a fee for reviewing requests of any construction work pursuant to this ARTICLE V, which fee shall be payable at the time the application for approval is submitted to the DRC. Fees shall be payable to the Association.

5.8 **Declarant Improvements.** The provisions of this ARTICLE V do not apply to, and approval of the DRC shall not be required for any construction work or replacement of any improvements made by or on behalf of the Declarant as the Developer in pursuit of Declarant's responsibilities to the Development.

5.9 **Warranty.** The approval by the DRC of any construction work pursuant to this ARTICLE V shall not be deemed a warranty or representation by the DRC as to the quality of such construction work or that the same conforms to any applicable building codes or other governmental statute, ordinance, rule or regulation.

5.10 **Security for Approval of Plans.** The DRC may condition its approval of plans and specifications upon the agreement by the Owner submitting them to furnish the Association a bond or other security acceptable to the DRC in an amount determined by the DRC to be reasonably sufficient to: (a) assure the completion of the proposed construction work, improvements or the availability of funds adequate to remedy any nuisance or unsightly conditions occurring as a result of the partial completion of such work, and/or (b) to repair any damage which might be caused to any Area of Association Responsibility as a result of such work.

5.11 **Release of Security.** Any security bond required by Section 5.10 shall be released or any other security fully refundable to the Owner upon : (a) the completion of the construction work in accordance with the plans and specifications approved by the DRC; and (b) the Owner's written request to the DRC, provided that there is no damage caused to any Area of Association Responsibility by the Owner or the Owner's agents or contractors.

5.12 **Liability.** Neither the DRC nor any member thereof, shall be liable to any Owner, or to any other party for any damage, loss or prejudice suffered or claimed on account of:

- (a) Approval or disapproval of any plans, drawings or specifications whether or not the same are defective;
- (b) The construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications;
- (c) The development of any portion of the Development; 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 him.

Without in any way limiting the generality of any of the foregoing provisions of this Section 5.12, the DRC, or any member thereof, may, but is not required to, consult with, or hear the views of any Owner with respect to any plans, drawings, specifications, or any other proposal submitted to the DRC for review.

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ARTICLE VI

USE RESTRICTIONS

6.1 **Commercial Activities.** No hotel, store, multi-family dwelling, boarding house, guest ranch, or any other type of business of any kind, nor care or treatment of the physically or mentally ill or disabled, nor any commercial facility for the care or treatment of sick or disabled animals shall be erected or permitted on the premises of any Lot, and no business of any kind or character whatsoever shall be conducted in or from any Residence or other building on any Lot. However, an Owner or resident of a Lot may use a portion of a Single Family Residence located on a Lot as a home office to conduct a trade or business if the Single Family Residence is primarily used for residential purposes and the trade or business activity: (a) is merely incidental to the residential use of the Lot; (b) consists of typical office uses only and is used only by residents of the house; (c) does not include any other commercial uses, including, without limitation, manufacturing, production, repairs, warehousing or boarding; (d) is not apparent or detectable by sight, sound or smell from the exterior of the house; (e) conforms to all zoning requirements for the Development and all other applicable laws and ordinances; (f) does not increase the liability of casualty insurance obligation or premium of the Association; (g) is consistent with the residential character of the Development; and (h) does not constitute a nuisance or a hazardous or offensive use, including without limitation, excessive or unusual traffic or parking of vehicles in the vicinity of any Lot, as may be determined by the Board in its sole and absolute judgment and discretion.

6.2 **Signs.** No advertising signs, billboards, unsightly objects, or nuisances shall be erected, placed, or permitted to remain on any Lot except that a single "For Sale" or "For Rent" sign, not larger than twenty-four inches (24") by twenty-four inches (24") may be placed on any Lot; provided, however, the Declarant, its successors, or its agent may erect or place signs within the Development as it deems appropriate or necessary to reasonably permit the promotion and sale of Lots therein.

6.3 **Utility Service.** No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone and radio signals, shall be erected, placed, or maintained anywhere in or upon any Lot unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under, or on buildings or other structures as approved by the DRC. No provision of this Declaration shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the DRC.

6.4 **Trash Containers and Collections.** No garbage or trash shall be placed or kept on any Lot within the Development, except in covered containers. In no event shall such containers be maintained so as to be visible from neighboring property except to make the same available for collection and then, only for the shortest time reasonably necessary to effect such collection.

6.5 **Burning and Incinerators.** No open fires or burning shall be permitted on any Lot at any time without a burning permit issued by the appropriate governmental authority, and no incinerators or like equipment shall be placed, allowed, or maintained upon any Lot. The foregoing shall not be deemed to preclude the use, in customary fashion, of outdoor residential barbecues or grills.

6.6 **Antennas.** No antenna or broadcasting tower shall be erected on any Lot, except that a television antenna may be maintained so long as said antenna is attached to the roof of a Residence and does not rise more than 6 feet above the roof of said structure. No antenna or other device for the transmission or reception of radio signals or any other form of electromagnetic radiation including, without

limitation, satellite or microwave dishes shall be erected, used or maintained on any Lot without the prior written approval of the DRC, unless the same are less than 2.5 feet in diameter.

6.7 **Variances.** The DRC may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this ARTICLE VI if it determines in its discretion that (a) a particular restriction would create an unreasonable hardship or burden on an Owner; (b) a change of circumstances since the recording of this Declaration has rendered such restriction obsolete; or (c) that the activity permitted under the variance will not have any substantial adverse effect on the Owners and residents in the Development and is consistent with the quality of life intended therein.

6.8 **Septic Tanks; Percolation Tests.** There is presently no public sewer system in place for the City of Charleston. Therefore, each Lot must have a septic tank and leach lines constructed pursuant to local standards and ordinances. Each Lot has passed a Wasatch County Health Department percolation test required for a building permit. Such tests were performed in suggested areas of each Lot to assure building feasibility. In the event a Lot Owner prefers a different building site, another test may be required which shall be at the expense of such Owner.

6.9 **Rights of Declarant.** Among other rights set forth herein, Declarant shall have the right to construct and maintain parking areas for the purpose of accommodating persons visiting the Development. Declarant may store supplies of building materials on Lots owned by the Declarant in connection with any construction activities of Declarant, which shall not be considered a nuisance or otherwise prohibited by this Declaration.

ARTICLE VII

EASEMENTS

7.1 **Utility Easements.** There is hereby created an easement upon, across, over and under each Lot for reasonable ingress, egress, installation, replacing, repairing, or maintaining of all utilities, including, but not limited to, gas, water, sewer, irrigation water, telephone, cable television, and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment on the Lots, but no sewer, electrical, water, or other utility or service lines may be installed or located on the Lots except as initially designed, approved, and constructed by the Declarant or an Owner (as approved by the DRC), unless approved by the DRC.

7.2 **Declarant's Use for Sales Purposes.** Declarant shall have the right and an easement to maintain sales and management offices on any Lot owned by Declarant and to maintain one or more advertising, identification, or directional signs on Lots owned by Declarant as long as there remain any unsold Lots.

7.3 **Declarant's Easements.** Declarant shall have the right and an easement on and over Areas of Association Responsibility to construct such improvements as Declarant may deem necessary, and to use the Areas of Association Responsibility and any Lots owned by Declarant for construction or renovation related purposes, including the storage of equipment, building materials, supplies and fixtures, and the performance of any work with respect to the Development. Declarant shall have the right and easement upon, over and through the Areas of Association Responsibility as may be reasonably necessary

for the purpose of discharging its obligations or exercising the rights granted to or reserved by Declarant pursuant to this Declaration.

7.4 Easement in Favor of Association. The Lots are hereby made subject to the following easements in favor of the Association and its trustees or directors, officers, agents, employees and independent contractors:

- (a) To verify the performance by Owners of all items of maintenance and repair for which they are responsible;
- (b) For inspection, maintenance, repair and replacement of the Areas of Association Responsibility accessible only from such Lots;
- (c) For situations of emergency on one or more Lots;
- (d) To enable the Association, the Board or any committees appointed by the Board to exercise and discharge their respective rights, powers and duties pursuant to this Declaration or the Articles; and
- (e) To verify that the provisions of the Declaration are being complied with by the Owners, their guests, tenants, and invitees.

ARTICLE VIII

INSURANCE

8.1 Scope of Coverage. Commencing not later than the time of the first conveyance of a Lot by Declarant to a purchaser, the Association shall maintain, to the extent reasonably available, the following insurance coverage:

- (a) Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$500,000 for any person injured, \$1,000,000 for all persons injured in any one occurrence, and \$500,000 for property damage resulting from one occurrence. Such insurance shall cover all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Areas of Association Responsibility, and all other portions of the Development which the Association is obligated to maintain under this Declaration;
- (b) Property insurance on all Areas of Association Responsibility insuring against all risk of direct physical loss insured against in an amount equal to the maximum insurable replacement value of the Areas of Association Responsibility, as determined by the Board; provided, however, that the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from a property policy;

(c) Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association and the Owners;

(d) The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions: (i) that there shall be no subrogation with respect to the Association, its agents, servants, and employees, with respect to Owners and members of their household; (ii) no act of omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery on the policy; (iii) that the coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners or their mortgagees or beneficiaries under deeds of trust; (iv) a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners; and (v) statement of the name of the insured as the Association.

8.2 Certificates of Insurance. An insurer that has issued an insurance policy under this Article shall issue a certificate 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 30 days after notice of the proposed cancellation has been mailed to the Association, each Owner and each Mortgagee or beneficiary under a deed of trust to whom certificates of insurance have been issued.

8.3 Payment of Premiums. The premiums for any insurance obtained by the Association pursuant to Section 8.1 of this Declaration shall be included in the budget of the Association and shall be paid by the Association as a Common Expense.

8.4 Payment of Insurance Proceeds. With respect to any loss to any Area of Association Responsibility covered by property insurance obtained by the Association in accordance with this ARTICLE VIII, the loss shall be adjusted with the Association, and the insurance proceeds shall be payable to the Association and not to any Mortgagee or beneficiary under a deed of trust. Subject to the provisions of Section 8.5, the proceeds shall be disbursed for the repair or restoration of the damage to the Area of Association Responsibility.

8.5 Repair and Replacement of Damaged or Destroyed Property. Any portion of the Areas of Association Responsibility which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) repair or replacement would be illegal under any state or local health or safety statute or ordinance; or (ii) Owners representing at least eighty percent (80%) of the total authorized votes in the Association vote not to repair or rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If all of the Areas of Association Responsibility are not repaired or replaced, insurance proceeds attributable to the damaged Areas of Association Responsibility shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall either be retained by the Association as an additional capital reserve, or be used for payment of Common Expenses of the Association if such action is approved by the affirmative vote or written consent, or any combination thereof, of Owners representing a majority of the votes in the Association.

ASSOCIATION BYLAWS

THE ASSOCIATION'S BYLAWS ARE HEREBY EMBODIED IN THIS DECLARATION AS ARTICLES IX, X AND XI. THE GENERAL PROVISIONS OF ARTICLE XII OF THIS DECLARATION SHALL BE APPLICABLE TO BOTH THE BYLAW PROVISIONS AND ALL OTHER PROVISIONS IN THIS DECLARATION.

ARTICLE IX

BYLAWS - MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

9.1 **Membership.** Upon acquiring title to a Lot, every Owner shall automatically become a member of the Association and shall remain a member thereof until such time as his ownership of such Lot ceases for any reason, at which time his membership in the Association with respect to such Lot shall automatically cease and the successor Owner shall become a member. Membership in the Association shall be mandatory and shall be appurtenant to, and may not be separated from, the ownership of a Lot.

9.2 **Voting Rights.** The Association shall initially have two classes of voting rights, votes of both classes being of equal value as to all matters except for determining the presence or absence of a quorum at Association meetings, in which case such determination shall be made as if there were no Class B voting rights.

(a) **Class A.** Each Owner, including Declarant, shall be entitled to one vote for each Lot in which such Owner holds the interest required for Association membership.

(b) **Class B.** Declarant shall be the only person entitled to Class B voting rights which shall entitle Declarant to one vote for each Class A voting right outstanding at the time (including those to which Declarant is entitled). Class B voting rights shall terminate and become a nullity on the earlier of:

(i) the expiration of 90 days following the date on which the total outstanding Class A voting rights, other than those held by Declarant, equal the total number of Class B voting rights to which Declarant is entitled pursuant to the provisions of Section 9.2(b);
or

(ii) on December 31, 2006; or

(iii) upon surrender of the Class B voting rights by Declarant in writing to the Association. Upon termination of the Class B voting rights, all members, including Declarant, shall have equal voting rights as to all matters.

9.3 **Multiple Ownership Interests.** In the event there is more than one Owner of a particular Lot, the vote relating to such Lot shall be exercised as such Owners may determine between or among themselves, but in no event shall more than the total number of votes appurtenant to such Lot be cast with respect to any issue. A vote cast at any Association meeting or by written consent by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the entire vote attributable to the applicable Lot unless an objection is made at the meeting or in writing by another Owner of the same Lot,

in which event no vote will be counted with respect to such Lot except to determine the presence or absence of a quorum.

9.4 Records of Ownership. Every Owner shall promptly cause to be duly filed of record in the Public Records the conveyance document (or in the case of a contract buyer, a copy of the sales contract or notice of interest) to him of his Lot and shall file a copy of such conveyance document with the Secretary of the Association, who shall maintain a record of ownership of the Lots. Any Owner who mortgages his Lot or any interest therein shall notify the Secretary of the Association of the name and address of the Mortgagee and also of the release of such Mortgage; and the Secretary of the Association shall maintain all such information in the records of ownership. The Association may at any time obtain and rely on information from the Public Records regarding the Owners and mortgagees of Lots.

9.5 Place of Meeting. Meetings of the Association shall be held at such suitable place convenient to the Owners as may be designated by the Secretary of the Association in the notice thereof.

9.6 Annual Meetings. Annual meetings of the membership of the Association shall be held each year beginning in the year 2002 on such month, day and time as is set forth in the notice therefor; provided, that after the first such annual meeting, a month other than the month of the initial meeting may be chosen if it is deemed by the membership to be more convenient. At such annual meetings there shall be elected Directors or Trustees of the Board, as needed, pursuant to the provisions of this Declaration. Financial and budget reports shall also be presented at such meetings as well as other business of the Association properly placed before each meeting.

9.7 Special Meetings. The President shall call a special meeting of the Owners as directed by a resolution of the Board or on a petition signed by Owners holding at least thirty percent (30%) of the total votes of the Association having been presented to the Secretary. No business shall be transacted at a special meeting except as stated in the notice therefor unless consented to by a majority of the Owners present, either in person or by proxy.

9.8 Notice of Meetings. The Secretary shall mail a notice of each annual or special meeting stating the purpose thereof as well as the time and place of the meeting to each Owner of record at least 10, but not more than twenty 20, days prior to such meeting. The mailing of notice by prepaid U.S. Mail or by delivery in person shall be considered notice served.

9.9 Quorum. Except as provided in Section 11.10, Owners present in person or by proxy at any membership meeting duly called pursuant to notice shall constitute a quorum at all meetings, both annual and special; provided, however, that such Owners collectively be entitled to cast at least forty percent (40%) of the total Association votes eligible to vote.

9.10 Adjourned Meetings. If any meeting of Owners cannot be organized because a quorum is not present, the Owners who are present either in person or by proxy may adjourn the meeting to a time not less than 48 hours nor more than 45 days from the time the original meeting was called, at which time the requirements for a quorum shall be reduced by one-half that required at the immediately preceding meeting.

9.11 Officers. The Association shall have a President, a Vice President, a Secretary and a Treasurer, all of whom shall be elected by and from the Board. Only the offices of Secretary and Treasurer may be filled by the same person. The officers shall be elected by the Board in an organizational

meeting of the Board immediately following each annual meeting of Owners at which the new Board has been elected; provided that until the Board is elected by the Owners pursuant to Section 9.13, the officers will be appointed by Declarant.

(a) **President.** The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and of the Board. The President shall have all of the general powers and duties that are usually vested in the office of president of a similar type association.

(b) **Vice President.** The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor Vice President is able to act, the Board shall appoint some other member of the Board to do so on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed on him by the Board.

(c) **Secretary.** The Secretary shall keep the minutes of all meetings of the Board and the minutes of all meetings of the Association. The Secretary shall have charge of such books and records as the Board may direct and shall, in general, perform all duties incident to the office of secretary of a similar type association.

(d) **Treasurer.** The Treasurer shall have responsibility for Association funds and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. The Treasurer shall be responsible for the deposit of all money and any other valuable effects in the name and to the credit of the Association in such depositories as may from time to time be designated by the Board.

9.12 **Initial Composition of Board: Declarant Control.** Declarant alone shall have the right to select the initial Board which may be composed of three members, none of whom need be Owners, or to perform the duties of the Board in place of the Board. Such right of the Declarant to appoint the Board, or to perform its duties, shall remain in Declarant until the termination of the Class B voting rights as provided in Section 9.2(b) at which time the Association shall proceed to elect members of the Board in accordance with the Association's Bylaws as set forth in Section 9.13.

9.13 **Board of Directors or Trustees: Owner Control; Composition, Election, Vacancies.** Subject to the provisions of Section 9.12, the Board shall be composed of three members, each of whom shall be an Owner (or an officer, director, or agent of a non-individual Owner). At the first meeting of Owners to elect the Board, one member shall be elected to a three-year term, one to a two-year term, and one to a one-year term. As members' terms expire, new members shall be elected for three-year terms and shall serve on the Board until their successors are elected. Vacancies on the Board shall be filled by the remaining Board members from among the Owners and such appointees shall serve until the next annual meeting of Owners when their successors shall be elected for the unexpired term of the member they were appointed to replace. The Owners may increase the number of Board members to five at any meeting of Association members.

9.14 **Indemnification of Board.** Each of the members of the Board shall be indemnified and held harmless by the Lot Owners against all costs, expenses, and liabilities whatsoever (excluding fraudulent and/or criminal actions) including, without limitation, attorneys fees reasonably incurred in

connection with any proceeding in which such Board member may become involved by reason of being or having been a member of said Board.

9.15 Board Meetings, Quorum, Board Action. The Board shall establish its rules for meetings, whether regular or special. A majority of current Board members shall constitute a quorum. The action of a majority of those Board members attending a meeting at which a quorum is present shall be sufficient to constitute the action of the Board. Action by consent shall require the unanimous written consent of all current Board members.

ARTICLE X

BYLAWS - DUTIES AND POWERS OF THE ASSOCIATION

10.1 Duties of the Association. The Association, through its Board, is responsible for the maintenance of any Common Elements, the determination, imposition and collection of Assessments, the enforcement of the provisions of this Declaration and, in general, the preservation of the rural residential quality and character of the Development to the benefit and general welfare of the Owners. Without limiting any other duties which may be imposed upon the Association by its Articles, Bylaws, or the Declaration, the Association shall have the obligation and duty to do and perform each and every one of the following for the benefit of the Owners and the maintenance and improvement of the Development:

- (a) The Association shall accept all Owners as members of the Association.
- (b) The Association shall accept title to all Common Elements conveyed to it, whether by Declarant or by others, but may refuse if the same is not free and clear of liens and encumbrances.
- (c) The Association shall maintain, repair and replace any structural Common Elements.
- (d) The Association shall perform all of its obligations pertaining to the Areas of Association Responsibility.
- (e) To the extent not assessed to or paid by the Owners directly, the Association shall pay all real property taxes and assessments levied upon any portion of the Common Elements, provided that the Association shall have the right to contest or compromise any such taxes or assessments.
- (f) The Association shall obtain and maintain in force the policies of insurance required of it by the provisions of the Declaration.
- (g) The Association may employ a responsible corporation, partnership, firm, person or other entity, as the Managing Agent to manage and control the Common Elements, subject at all times to direction by the Board, with such administrative functions and powers as shall be delegated to the Managing Agent by the Board. The compensation of the Managing Agent shall be reasonable as specified by the Board. Any agreement appointing a Managing Agent shall be terminable by either party, with or without cause and without payment of any termination fee,

upon 30 days' written notice thereof. Any Managing Agent may be an agent or employee of the Association or an independent contractor, as the Board deems appropriate.

10.2 Powers and Authority of the Association. The Association shall have all the powers set forth in its Articles and Bylaws, together with its general powers as a nonprofit corporation, and the power to do any and all things which may be authorized, required or permitted to be done by the Association under and by virtue of the Declaration or the Bylaws. Without in any way limiting the generality of the foregoing, the Association shall have the following powers:

(a) At any time and from time to time and without liability to any Owner for trespass, damage or otherwise, to enter upon any Lot for the purpose of maintaining and repairing such Lot or any improvement thereon if for any reason the Owner fails to maintain and repair such Lot or improvement as required herein. The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Declaration, the Bylaws or any Rules and Regulations promulgated by the Board, or to enforce by mandatory injunction or otherwise all of the provisions of the Declaration, the Bylaws and such Rules and Regulations.

(b) In fulfilling any of its duties under the Declaration, including in the Areas of Association Responsibility, the Association shall have the power and authority to obtain, contract and pay for, or otherwise provide for:

(i) Construction, maintenance, repair and landscaping of the Common Elements on such terms and conditions as the Board shall deem appropriate;

(ii) Such insurance policies or bonds as the Board may deem appropriate for the protection or benefit of the Association, the members of the Board and the Owners;

(iii) Such Common Element related utility services as the Board may from time to time deem necessary or desirable;

(iv) The services of architects, engineers, attorneys and certified public accountants and such other professional or nonprofessional services as the Board may deem desirable;

(v) Fire, police and such other protection services as the Board may deem desirable for the benefit of the Owners or any portion of the Development; and

(vi) Such materials, supplies, equipment, services and labor as the Board may deem necessary.

10.3 Design Review Committee. The Association shall have a Design Review Committee ("DRC") to perform architectural and landscape design reviews as set forth in the Declaration. The DRC shall be a committee appointed by the Board and shall consist of such number of regular members and alternate members as may be determined by the Board. The DRC shall promulgate new, or repeal old, architectural guidelines, standards and procedures to be used in rendering its decisions, which may include, without limitation, provisions regarding: (a) the size of Residences and Outbuildings; (b) architectural design, with particular regard to the harmony of the design with the surrounding structures and topography;

(c) placement of Residences and Outbuildings; (d) landscape designs, including context, and conformance with the character of the Development, and permitted and prohibited plants; (e) requirements concerning exterior color schemes; (f) signage; and (g) perimeter and screen fencing design and appearance.

10.4 **Association Rules and Regulations.** The Board from time to time, subject to and not inconsistent with the provisions of the Declaration or the Bylaws, may adopt, amend, repeal and enforce reasonable Rules and Regulations governing, among other things: (a) the use of the Common Elements; (b) the collection and disposal of refuse; (c) uses and nuisances pertaining to the Development; and (d) all other matters concerning the use and enjoyment of the Common Elements and the conduct of Owners and their invitees within the Development.

10.5 **Limitation of Liability.** No member of the Board acting in good faith shall be personally liable to any Owner, guest, tenant or any other person for any error or omission of the Association, its representatives and employees, the Board, any committee of the Board, or the Managing Agent.

ARTICLE XI

BYLAWS - ASSESSMENTS

11.1 **Personal Obligation and Lien.** Each Owner shall, by acquiring or in any way becoming vested with his interest in a Lot, be deemed to covenant with, and agree to pay to, the Association the Assessments described in this ARTICLE XI, together with late payment fees, interest and costs of collection, if and when applicable. All such amounts shall be, constitute, and remain: (a) a charge and continuing lien upon the Lot with respect to which the Assessment is made until fully paid; and (b) the personal, joint and several obligation of the Owner or Owners of such Lot at the time the Assessment falls due. No Owner may exempt himself or his Lot from liability for payment of Assessments by waiver of his rights in the Common Elements or by abandonment of his Lot. In a voluntary conveyance of a Lot, the grantee shall be jointly and severally liable with the grantor for all unpaid Assessments, late payment fees, interest and costs of collection, including reasonable attorney's fees, which shall be a charge on the Lot at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor.

11.2 **Purpose of Assessments.** Assessments levied by the Association shall be used exclusively for the purpose of promoting the Development, the interests of the Owners therein, paying costs properly incurred by the Association, and the maintenance, operation and carrying of the Common Elements. The use made by the Association of funds obtained from Assessments may include, but shall not be limited to, payment of the Common Expenses and any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions or purposes under the Declaration, its Articles and Bylaws or the Rules and Regulations.

11.3 **Annual Assessments.** Annual Assessments shall be computed and assessed against all Lots in the Development based upon advance estimates of the Association's cash requirements to provide for payment of Common Expenses.

11.4 **Annual Budget.** Annual Assessments shall be determined on the basis of a fiscal year ending December 31; provided the first fiscal year shall begin on the date of recordation of this Declaration in the Public Records. On or before December 15 of each fiscal year, the Board shall prepare and furnish

to each Owner an operating budget for the upcoming fiscal year. The operating budget for the first fiscal year shall be prepared and furnished to each Owner within 30 days of such Owner's initial purchase. The budget shall itemize the estimated cash requirements for such fiscal year, anticipated receipts, and any deficit or surplus from the prior operating period. The budget shall serve as the supporting document for the Annual Assessments for the upcoming fiscal year and as the major guideline under which the Development shall be operated during such annual period.

11.5 Notice and Payment of Annual Assessments. Except with respect to the fiscal period ending December 31, 2001, the Association shall notify each Owner as to the amount of the Annual Assessment against his Lot on or before December 15 of the year preceding the year for which such Annual Assessment is made. Each Annual Assessment shall be payable in a single payment, in advance, on or before January 31 of the fiscal year to which the Annual Assessment relates. The failure of the Association to give timely notice of any Annual Assessment as provided herein shall not be deemed a waiver of or modification in any respect of the provisions of the Declaration, or a release of any Owner from the obligation to pay such Annual Assessment or any other Assessment; but the date when the payment shall become due in such case shall be deferred to a date 15 days after notice of such Annual Assessment shall have been given to the Owner in the manner provided in Section 12.1.

11.6 Initial and Transfer Fees. Each Owner (other than Declarant), shall be required to prepay at the time of purchase of his Lot, whether as a first time or subsequent Owner, the sum of \$200, which sum shall be in addition to the Annual Assessment which may be due in advance for the current fiscal year in which a new Owner purchases his Lot. Such fees shall become part of the Association's general fund to be utilized as necessary for payment of Common Expenses.

11.7 Maximum Annual Assessment. Until January 1 of the calendar year immediately following the conveyance of the first Lot to an Owner, the maximum Annual Assessment shall not exceed the amount per Lot that is determined by the Board pursuant to Section 11.4. From and after January 1 of the calendar year immediately following the conveyance of the first Lot to an Owner, the maximum Annual Assessment may be increased by the Board each calendar year thereafter (non-cumulatively) by not more than twenty-five percent (25%) above the maximum Annual Assessment for the previous year, without the vote of Owners entitled to cast a majority of the Association votes.

11.8 Special Assessments. The Association may levy Special Assessments for the purpose of defraying, in whole or in part: (a) any expense or expenses not reasonably capable of being fully paid with funds generated by Annual Assessments; or (b) the cost of any construction, reconstruction, or unexpectedly required addition to, or replacement of, infrastructure or improvements within the Common Elements. Any such Special Assessment shall be apportioned among and assessed to all Lots in the same manner as Annual Assessments. Such Special Assessments must be assented to by at least sixty percent (60%) of the votes of the membership which Owners present in person or represented by proxy are entitled to cast at a meeting duly called for such purpose. Written notice setting forth the purpose of such meeting shall be sent to all Owners at least 10 but not more than 30 days prior to the meeting date.

11.9 Uniform Rate of Assessment. All Annual and Special Assessments authorized by Sections 11.3 and 11.8, respectively, shall be fixed at a uniform rate for all Lots; provided, however, that until a Lot has been both fully improved and sold to a third party purchaser, the Annual and Special Assessments applicable to such Lot shall not be due and payable. During the period of time that Declarant holds the Class B voting rights in the Association, if assessed fees collected by the Association fail to adequately meet Association expenses, then Declarant shall pay any shortfall.

11.10 Quorum Requirements. The quorum at any Association meeting required for any action authorized by Section 11.8, above, shall be as follows: At the first meeting called, the presence of Owners or proxies entitled to cast sixty percent (60%) of the total Association votes eligible to vote shall constitute a quorum. If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called (subject to the notice requirements set forth in Section 11.8, above) at which a quorum shall be one-half (½) of the quorum which was required at the immediately preceding meeting.

11.11 Specific Assessment. In addition to the Annual Assessment and any Special Assessment authorized pursuant to Sections 11.3 and 11.8, the Board may levy at any time Specific Assessments (a) on every Lot especially benefitted (i.e., benefitted to a substantially greater degree than any other Lot) by any improvement to adjacent roads, sidewalks, planting areas or other portions of the Common Elements made on the written request of the Owner of the Lot to be charged; (b) on every Lot the Owner or occupant of which shall cause any damage to the Common Elements necessitating repairs; and (c) on every Lot as to which the Association shall incur any expense for maintenance or repair work performed, or enforcement action taken, pursuant to any of the provisions of the Declaration. The aggregate amount of any such Specific Assessment shall be determined by the cost of such improvements, repairs, maintenance or enforcement action, including all overhead and administrative costs, and all attorney's fees and costs, and shall be allocated among the affected Lots according to the magnitude of special benefit, or cause of damage, or maintenance, or repair work, or enforcement action, as the case may be, and such Assessment may be made in advance of the performance of work. If a special benefit arises from any improvement which is part of the general maintenance or operation obligations of the Association, it shall not give rise to a Specific Assessment against the Lots benefitted.

11.12 Certificate Regarding Payment. Upon the request of any Owner or prospective purchaser or encumbrancer of a Lot and upon the payment of a reasonable fee to the Association to cover administrative costs, the Association shall issue a certificate stating whether or not payments of all Assessments respecting such Lot are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who rely thereon in good faith.

11.13 Effect of Nonpayment; Remedies. Any Assessment (whether Annual, Special or Specific) not received within 10 days of the date on which it or any instalment thereof becomes due shall be subject to a late charge not to exceed 5% thereof, which, together with interest and costs of collection, shall be, constitute, and remain a continuing lien on the affected Lot. If any Assessment is not received within 10 days after the date on which it becomes due, the amount thereof shall also bear interest from the due date at the rate of one percent (1%) per month; and the Association may bring an action against the Owner who is personally liable therefor, or may foreclose its lien against the Lot pursuant to the provisions of the Utah Code, 1953, as amended, applicable to the exercise of powers of sale in deeds of trust, by foreclosure as a mortgage or in any other manner permitted by law. Any judgment obtained by the Association in connection with the collection of delinquent Assessments and related charges shall include reasonable attorney's fees, court costs, and every other expense incurred by the Association in enforcing its rights. Failure of the Association to promptly enforce any remedy granted pursuant to this Section 11.13 shall not be deemed a waiver of any such rights.

11.14 Subordination of Lien to Mortgages. The lien of the Assessments provided herein shall be subordinate to the lien of any Mortgage given in the first instance to a bank, savings and loan association, insurance company or other institutional lender; and the holder of any such Mortgage or a purchaser who comes into possession of or becomes the Owner of a Lot by virtue of the foreclosure of such Mortgage, or the exercise of a power of sale under such Mortgage, or by deed in lieu of foreclosure,

shall take free of such assessment lien as to any Assessment instalment which accrues or becomes due prior to the time such holder or purchaser comes into possession or ownership of such Lot; provided, that to the extent there are any proceeds of the sale on foreclosure of such Mortgage, or by exercise of such power of sale, in excess of all amounts necessary to satisfy all indebtedness secured by and owed to the holder of such Mortgage, the lien shall apply to such excess. No sale or transfer of a Lot in connection with any foreclosure of a Mortgage shall relieve any Lot from the lien of any Assessment instalment thereafter becoming due.

11.15 **No Abatement.** No diminution or abatement of any Assessments under the Declaration shall be claimed or allowed for inconvenience, annoyance, or discomfort arising from (a) any construction (or lack of construction) within the Development; (b) the making of (or failure to make) any repairs or improvements to, or the maintenance of, any Common Elements of the Development; or (c) from any action taken to comply with the provision of the Declaration or with the laws, ordinances, regulations, rules, or orders of any governmental authority.

ARTICLE XII

GENERAL PROVISIONS

12.1 **Notices.** Any notice required or permitted to be given to any Owner under the provisions of this Declaration shall be deemed to have been properly furnished if delivered or mailed, postage prepaid, to the person named as the Owner, at the latest address for such person, as reflected in the records of the Association at the time of delivery or mailing. Any notice required or permitted to be given to the Association may be given by delivering or mailing the same to the Managing Agent or any officer or Board member of the Association or to the Association's Registered Agent as reflected in the Association's records at the Division of Corporations, Utah State Department of Commerce. Any notice required or permitted to be given to the DRC may be given by delivering or mailing the same to the Managing Agent of the Association or any member of the DRC.

12.2 **Amendment.** This Declaration may be amended (as opposed to terminated) by an instrument recorded in the Public Records, which is executed either by Owners who collectively hold at least sixty percent (60%) of the total outstanding votes in the Association, or by the Association's President and Secretary, who shall certify that the required sixty percent (60%) vote was obtained in a Member meeting, or by consent, and is so documented in the records of the Association. No amendment to any provision of this Declaration which has the effect of diminishing or impairing any right, power, authority, privilege, protection, or control accorded to Declarant (in its capacity as Declarant), shall be accomplished or effective unless the instrument through which such amendment is purported to be accomplished is specifically consented to in writing by Declarant.

12.3 **Consent in Lieu of Vote.** In any case in which this Declaration requires for authorization or approval of a transaction the assent or affirmative vote of a stated percentage or number of votes outstanding in the Association, or of the Owners, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Owners entitled to cast at least the stated percentage or number of all membership votes then outstanding in the Association, unless a higher percentage or a greater number is required by law. The following additional provisions shall govern any application of this Section 12.3:

(a) All necessary consents must be obtained prior to the expiration of 90 days after the first consent is given by any Owner;

(b) The total number of votes required for the applicable authorization or approval shall be determined as of the date on which the last consent is signed;

(c) Any change in ownership of a Lot which occurs after a consent has been obtained from the Owner thereof shall not be considered or taken into account for any purpose; and

(d) Unless the consent of all Owners whose memberships are appurtenant to the same Lot are secured, the consent of none of such Owners shall be effective.

12.4 **Declarant's Rights Assignable.** All or any portion of the rights of Declarant under this Declaration, or in any way relating to the Development, may be assigned.

12.5 **Interpretation.** The captions pertaining to the ARTICLE and Section numbers 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, and any gender shall include all genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof, which shall remain in full force and effect. The laws of the State of Utah shall govern the validity, construction and enforcement of this Declaration.

12.6 **Condemnation.** If at any time or times an insubstantial or minor part of the Common Elements or any part thereof shall be taken or condemned by any authority having the power of eminent domain, all compensation and damages shall be payable to the Association and shall be used by the Association to the extent necessary for restoring or replacing any improvements on the remainder of the Common Elements. In the event of any other taking or condemnation, the interests of the Association, the Owners and Mortgagees shall be as they may appear.

12.7 **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 Declarant, all parties who hereafter acquire any interest in a Lot, their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or occupant of a Lot or Unit shall comply with, and all interests in all Lots or in the Common Elements shall be subject to, the terms of this Declaration and the provisions of any Rules and Regulations, agreements, instruments, and determinations contemplated by this Declaration. By acquiring any interest in a Lot or Unit, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

12.8 **Enforcement of Restrictions.** The Association, any Owner or any Mortgagee shall have the right to exercise or seek any remedy at law or in equity to interpret, to enforce compliance with, or to obtain redress for violation of, this Declaration. The prevailing party in any such action shall be entitled to collect court costs and reasonable attorney's fees.

12.9 **Duration/Termination:** This Declaration shall remain in effect until such time as there is recorded in the Public Records, following the approval of the applicable municipality authorizing such termination, an instrument of termination which is executed by seventy-five percent (75%) of the total outstanding votes of the Association, plus the Mortgagee of each and every Lot.

12.10 **Effective Date.** This Declaration, and any amendment hereto, shall take effect upon its being filed for record in the Public Records.

EXECUTED by Declarant on the day and year first above written.

Rivers End, L.C.

By: Thomas S. Smart
Thomas S. Smart, Member/Manager

STATE OF UTAH)
 : ss.
COUNTY OF WASATCH)

The within instrument was acknowledged before me this 2nd day of August, 2001, by **Thomas S. Smart** in the capacity indicated.

Marie Sabey
NOTARY PUBLIC

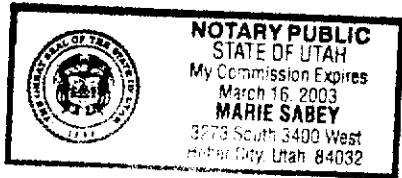


EXHIBIT A

**DECLARATION OF PROTECTIVE EASEMENTS,
COVENANTS, CONDITIONS AND RESTRICTIONS
(Including Owner Association Bylaws)**

WINTERTON FARMS AT CHARLESTON

Charleston, Wasatch County, Utah

Real property in City of Charleston, Wasatch County, Utah:

PARCEL A

BEGINNING AT THE SOUTH $\frac{1}{4}$ SECTION CORNER OF SECTION 11, T. 4 S., R 4 E. OF THE SLB&M, THENCE ALONG THE SECTION LINE S89°54'21"W 109.54 FEET, THENCE N0°18'01"W 326.75 FEET, THENCE N38°08'28"W 20.82 FEET, THENCE N72°02'41"W 61.64 FEET, THENCE N79°22'58"W 97.74 FEET, THENCE N81°19'59"W 204.67 FEET, THENCE N81°35'14"W 202.24 FEET, THENCE N81°40'15"W 75.85 FEET, THENCE N46°44'11"W 89.40 FEET, THENCE N0°31'03"W 544.34 FEET, THENCE N0°50'06"W 42.72 FEET, THENCE N54°12'29"E 130.74 FEET, THENCE N43°53'05"E 256.62' FEET, THENCE N33°32'31"E 17.56 FEET, THENCE N42°56'27"E 312.78 FEET, THENCE N45°49'43"E 507.10 FEET, THENCE N53°45'00"E 412.50 FEET, THENCE N27°40'46"E 259.36 FEET MORE OR LESS TO THE SOUTH RAILROAD R.O.W., THENCE ALONG R.O.W. S75°40'37"E 797.84 FEET, THENCE LEAVE R.O.W. S36°40'17"E 81.71 FEET, THENCE SOUTH 492.04 FEET, THENCE S8°26'23"W 8.00 FEET, THENCE S0°36'02"E 185.69 FEET, THENCE S1°09'20"E 135.81 FEET, THENCE N89°31'08"E 682.20 FEET, THENCE S5°01'24"W 303.99 FEET, THENCE N89°01'16"W 28.00 FEET, THENCE S23°55'48"W 405.89 FEET, THENCE S17°19'52"W 173.69 FEET, THENCE S8°30'00"W 219.00 FEET, THENCE S76°00'00"E 18.00 FEET, THENCE S10°30'00"W 100.00 FEET, THENCE S18°00'0"W 201.14 FEET TO SECTION LINE, THENCE ALONG SECTION LINE S89°53'04"W 291.26 FEET, THENCE LEAVE SECTION LINE NORTH 333.26 FEET, THENCE S89°53'04"W 401.53 FEET TO CORNER OF FENCES, THENCE ALONG FENCE LINE FOUR COURSES: N84°09'35"W 225.63 FEET, THENCE N54°27'51"W 194.04 FEET, THENCE N62°45'12"W 29.78 FEET, THENCE N53°41'28"W 273.77 FEET TO PROJECTION OF FENCE FROM THE SW, THENCE S42°04'57"W 394.16 FEET TO CORNER OF FENCES, THENCE S12°14'18"W 135.63 FEET, THENCE S0°06'56"E 221.51 FEET TO THE SECTION LINE, THENCE S89°53'04"W 23.25 FEET TO THE SOUTH $\frac{1}{4}$ SECTION CORNER OF SECTION 11 AND THE POINT OF BEGINNING.

AREA OF PARCEL A: 92.48 ACRES.

PARCEL B

BEGINNING AT A POINT WHICH IS EAST ALONG THE SECTION LINE 236.60 FEET FROM THE NORTH $\frac{1}{4}$ SECTION CORNER OF SECTION 14, T 4 S, R 4E, SLB&M, THENCE N89°53'04"E 600.18 FEET ALONG THE SECTION LINE, THENCE S0°01'30"E 557.47 FEET, THENCE N89°42'07"W 523.72 FEET, THENCE N59°47'35"W 85.53 FEET, THENCE N0°18'44"W 510.51 FEET TO THE POINT OF BEGINNING.

AREA OF PARCEL B: 7.60 ACRES

TOTAL 100.08 ACRES

E 235857 B 0516 P 0432