

24/0
After recordation, return to:

Provo City Housing Authority
C/O Gretta C. Spendlove
Durham, Jones, & Pinegar
111 East Broadway, Suite 900
Provo, Utah 84111

ENT 26275:2004 PG 1 of 24
RANDALL A. COVINGTON
UTAH COUNTY RECORDER
2004 Mar 08 4:55 pm FEE 0.00 BY SS
RECORDED FOR PROVO CITY HOUSING AUTHORIT

**DECLARATION OF EASEMENTS, COVENANTS,
CONDITIONS AND RESTRICTIONS**

FRANKLIN PLACE

A Planned Unit Development

Provo City, Utah County, Utah

This DECLARATION (the "Declaration") is made this 5th day of March, 2004 by PROVO CITY HOUSING AUTHORITY, a body corporate and politic (the "Declarant"), in its capacity as the owner and developer of Franklin Place, a planned unit development located in Provo, Utah.

ARTICLE I

PURPOSE AND EFFECTUATION

1.01 Purpose. The purpose of this instrument is to provide for the preservation of the values of Units and residential Buildings within Franklin Place, a planned unit development in Provo, Utah, and for the maintenance of the roadways, driveways, sidewalks, parking, amenities, open spaces, landscaping and all other Common Areas therein.

1.02 Effectiveness. From and after the effective date hereof: (a) Each part of the Development and each Unit and Building, lying within the boundaries of the Development shall constitute constituent parts of a single planned unit development; (b) The Development shall consist of the Units and of the Common Areas which are described and depicted on the Plat; (c) The Declaration for the Development shall consist of this document as the same may be modified, amended, supplemented, or expanded in accordance with the provisions hereof; and (d) The Plat of the Development shall consist of the instrument which is identified as Plat "A", Franklin Place, a Performance Development, Provo City, Utah County, Utah, and filed for record on January 29, 2003 as Entry # 13959: 2003 Map #9875 in the office of the Utah County Recorder, Provo, Utah, as the same may be amended, and any subsequent plats which may be filed for record pursuant to the provisions herein relating to annexation or expansion of the Development.

DEFINITIONS

When used in this Declaration each of the following terms shall have the meaning indicated.

2.01 Articles shall mean and refer to the Articles of Incorporation of the Association, which are or shall be filed in the Office of the Division of Corporations and Commercial Code, State of Utah, as amended from time to time.

2.02 Assessment shall mean the amount, which is to be levied and assessed against each Unit and paid by each Owner to the Association for Association expenses.

2.03 Association shall mean FRANKLIN PLACE OWNERS ASSOCIATION, a Utah non-profit corporation, and its successors and assigns.

2.04 Board shall mean the Board of Directors of the Association.

2.05 Building shall mean a structure which is designed, constructed and intended for use or occupancy as a single family residence on a Unit, together with all improvements located on the same Unit and used in conjunction with such residence, including anything located within or without said Building (but designated and designed to serve only that Building) such as patios, decks, appliances, electrical receptacles and outlets, air conditioning compressors and other air conditioning apparatus.

2.06 Bylaws shall mean and refer to the Bylaws of the Association as set forth and embodied in this Declaration of Articles XI, XII, and XIII.

2.07 Common Areas shall mean all portions of the Development except the Units and Buildings, and shall include all property owned by the Association for the common use and enjoyment of the Owners such as all private undedicated roadways, driveways, parking, amenities, open spaces, landscaping, structural common areas, if any, and the like, together with all easements appurtenant thereto, as reflected on the Plat.

2.08 Declarant shall mean PROVO CITY HOUSING AUTHORITY, a body corporate and politic, created and existing under the laws of the State of Utah, its successors and assigns, if any, as developers of the Development.

2.09 Declaration shall mean this "Declaration of Easements, Covenants, Conditions and Restrictions of Franklin Place, A Planned Unit Development, Provo, Utah County, Utah" as the same may be supplemented or amended from time to time.

2.10 Development shall mean the planned unit development known as Franklin Place as it exists at any given time.

2.11 Limited Common Areas shall mean any Common Areas designated for exclusive use by the Owner of a particular Building. Limited Common Areas that are identified on the Plat with the same number or other designation by which a Building is identified thereon shall be Limited Common Area for the exclusive use of the Owner of the Building bearing the same number or designation.

2.12 Unit shall mean and refer to any of the separately numbered and individually described parcels of land within the Development as designated on the Plat intended for single family residential use.

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

2.14 Mortgage shall mean any recorded first mortgage or first deed of trust encumbering a Unit, and Mortgagee shall mean any mortgage or beneficiary under a mortgage.

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

2.16 Plat shall mean and refer to the Planned Unit Development plat covering the property entitled "Plat 'A', Franklin Place, A Planned Building Development, Provo, Utah County, Utah," prepared and certified to by Roger B. Dudley (a duly registered Utah Land Surveyor holding Certificate No. 147089), executed and acknowledged by Declarant, accepted by Provo City, and filed for record in the office of the County Recorder of Utah County, Utah on January 29, 2003 as Entry # 13959:2003 Map #9875.

2.17 Property shall mean all land covered by this Declaration, including common Areas and Units of the Development as provided in this Declaration.

2.18 Reimbursement Assessment shall mean a charge against a particular Owner or his/her Unit for the purpose of reimbursing the Association for costs incurred in bringing the Owner of his/her Unit or Building into compliance with the provisions of this Declaration, the Articles, Bylaws or rules and regulations of the Association, or any other charge designated as a Reimbursement Assessment in this Declaration, the Articles, Bylaws or rules and regulations of the Association, together with costs, interest, attorney's fees and other charges payable by such Owner pursuant to the provisions of this Declaration.

PROPERTY DESCRIPTION

3.01 Submission. The property which is and shall be held transferred, sold, conveyed and occupied subject to the provisions of this Declaration consists of the following described real property in the City of Provo, Utah County, State of Utah:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 1, BLOCK 26, PLAT "A", PROVO CITY SURVEY OF BUILDING LOTS, PROVO CITY, UTAH COUNTY, UTAH: THENCE AS FOLLOWS: WEST 100.13'; NORTH 99.35'; EAST 100.13'; SOUTH 99.35' TO THE POINT OF BEGINNING AREA = 9,947 SQ FT.

TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above-described parcel of real property, 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 said 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) (1) to construct and complete each of the buildings and Buildings and all of the other improvements described in this Declaration or in the Plat recorded concurrently herewith, and to do all things reasonably necessary or proper in connection therewith, (2) to improve portions of the said property with such other or additional 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, the said 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 shall exist with the exception of such perpetual easements, the reservations hereby effected shall, unless sooner terminated in accordance with their terms, expire ten (10) years after the date on which this Declaration is filed for record in the office of the County Recorder of Utah County, Utah.

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, 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.

3.02 Division into Units. The Development is hereby divided into two (2) Units, as set forth and described on the Plat, with appurtenant and equal rights and easements of use and enjoyment in and to the common Areas, as well as appurtenant obligations pertaining to assessments, maintenance, etc, all as set forth in this Declaration.

ARTICLE IV

DUTIES AND OBLIGATIONS OF OWNERS

4.01 Maintenance and Repairs. Each Owner shall at his/her own cost maintain his/her Unit and any improvements constructed thereon in good repair at all times, including Unit exteriors, roofs, and patio. In the event of the damage or destruction of any Building, the Owner of the Unit on which such Building is situated shall either rebuild the same within reasonable time or shall raze the remains thereof so as to prevent the unsightly appearance and dangerous condition of a partially destroyed building in the Development. The painting or repainting, remodeling, rebuilding or modification of any Building exteriors or parts thereof must be submitted to and approved by the Architectural Control Committee pursuant to its procedures.

4.02 Insurance. Notwithstanding any insurance coverage required to be provided herein by the Association, each Owner shall procure and maintain in force hazard insurance on personal contents and liability coverage as is customary in projects such as the Development and which is consistent with each Owner's individual circumstances.

4.03 Assessments and Rules Observance. Each Owner shall be responsible for the prompt payment of any Assessments provided for in this Declaration and for the observance of the rules and regulations promulgated by the Association from time to time. Owners in violation of the provisions of this Section 4.03 will not be deemed to be in good standing for Association voting purposes.

4.04 Transfer of Interests. Except for obligations already accrued, an Owner who, for other than purposes of security, transfers all of his/her interests in his/her Unit to another, either voluntarily or by operation of law, shall be relieved of all obligations under this Declaration, following such transfer.

ARTICLE V

PROPERTY RIGHTS AND CONVEYANCES

5.01 Easement Concerning Common Areas. Each Unit shall have appurtenant thereto a nonexclusive right and easement of use and enjoyment in and to the Common Areas for their intended purposes. Such right and easement shall be appurtenant to and shall pass with title to each Unit and shall in no event be separated therefrom.

5.02 Form of Conveyancing; Leases. Any deed, lease, mortgage, deed of trust, purchase contract or other instrument conveying or encumbering title to a Unit shall describe the interest or estate involved substantially as follows:

Unit No _____ as identified in the Plat recorded in the office of the Utah County Recorder as Entry No. 13959: 2003 and Map Filing No. 9875 Contained within Plat "A" of Franklin Place, A Performance Development, SUBJECT TO the "Declaration of Easements, Covenants, Conditions and Restrictions of Franklin Place, A Planned Unit Development Provo City, Utah County, Utah," recorded in the office of the Utah County Recorder in Book _____, at Page _____, as Entry No _____ (as said Declaration may have heretofore been amended or supplemented), TOGETHER WITH a right and easement of use and enjoyment in and to the Common Areas described, and as provided for, in said Declaration of Easements, Covenants, Conditions and Restrictions (as said Declaration may have heretofore been amended or supplemented).

Whether or not the description employed in any such instrument is in the above specified form, however, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Unit.

5.03 Transfer of Title to Common Areas. Concurrent with or immediately following the recordation of this Declaration and the Plat, Declarant shall convey to the Association title to the various Common Areas free and clear of all liens other than the lien of current general taxes and the lien of any non-delinquent assessments, charges, or taxes imposed by governmental or quasi-governmental authorities.

5.04 Limitation on Easement. Each Unit's appurtenant right and easement of use and enjoyment concerning the Common Areas shall be subject to the following:

- (1) The right of the Association to govern by reasonable rules and regulations the use of the Common Areas so as to provide for the enjoyment of the Common Areas in a manner consistent with the collective rights of all the Owners.
- (2) The right of the City of Provo, Utah, and any other governmental or quasi-governmental body having jurisdiction over the Property, to enjoy access and rights of ingress and egress over and across any street or driveway, parking area, walkway, or open area contained within the Common Areas for the purpose of providing police and fire protection and providing any other governmental or municipal service, and
- (3) The right of the Association to dedicate or transfer any part of the common Areas to any public agency or authority for such purposes and subject to

such conditions as may be agreed to by the Association, provided that such dedication or transfer must first be assented to in writing by (1) the holder of each and every Mortgage that encumbers any Unit and (2) the Owners of Units to which at least sixty percent (60%) of the total votes in the Association appertain.

5.05 Utility Easements. Each Unit is subject to appurtenant easements for underground lines for utility purposes under and through such portions of the Common Areas as are comprised of roads, walkways, and landscaped areas. If any owner utilizes such easement rights with respect to his/her Unit or Building, he/she shall be responsible for the restoration to its former state of any portion of the Common Areas, which may have been disturbed or damaged as a result.

5.06 Easements for Encroachments. If any structure or Building improvement (including without limitation, roof overhangs) constructed on any Unit whether or not constructed in replacement of the structure or improvement previously located thereon (so long as such structure or improvement is in substantially the same configuration and location as such prior structure or improvement) now or hereafter encroaches upon any other Unit or upon any portion of the Common Areas, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall exist.

If any structure (including without limitation, roof overhangs) on any Unit shall be partially or totally destroyed, and then rebuilt in a manner intended to substantially duplicate the location and configuration of the structure so destroyed, minor encroachments of such structure upon any other Unit or upon any portion of the Common Areas due to the reconstructed structure's being in a slightly different location than its predecessor shall be permitted and valid easements for such encroachments and the maintenance thereof, so long as they continue, shall exist.

ARTICLE VI

USE RESTRICTIONS

6.01 Use of Common Area. The Common Areas shall be used only in a manner consistent with the common unit nature and with the use restrictions applicable to Units and Buildings set forth herein.

6.02 Residential Use. The Property is zoned Residential R 1-6 PD and is restricted to single family residential use pursuant to applicable provisions of Provo City Ordinances. Each Unit, Building, and Owner are subject to the uses and restrictions imposed by such zoning, including occupancy and parking, and no Unit or Building shall be used, occupied, or altered in violation of such Ordinances or so as to create a nuisance or to interfere with the rights of any other Owner.

6.03 Prohibited Use and Nuisances. The following uses and practices are specifically prohibited, in addition to any additional prohibitions, which may, from time to time, be adopted

by the Board pursuant to Section 12.03 of this Declaration.

- (1) No Building or any part thereof shall be used or occupied by any persons not coming within the definition of "Family" as such term is defined and intended in the Provo City Ordinances as of the date hereof, provided, however, that no more than two (2) non-related persons may live with the residing family as such term is therein defined.
- (2) No lease of any Building shall be for less than the whole thereof.

No animals, livestock, or poultry of any kind shall be permitted on any Unit or within any Building except such domesticated household pets or birds as are allowed pursuant to the rules and regulations, including leash laws, adopted by the board pursuant to Section 12.03 of this Declaration.

ARTICLE VII

ARCHITECTURAL CONTROL

7.01 Architectural Control Committee. The Board of Directors of the Association shall act as the Architectural Control Committee (the "Committee"), the function of which shall be to ensure that all improvements and landscaping within the Development harmonize with existing surroundings and structures.

7.02 Submission to Committee. No Building, accessory of or addition to a Building which is visible from the Common Areas shall be constructed or maintained, and no alterations, repainting, or refurbishing of the exterior of any Building shall be performed, unless complete plans and specifications therefore have first been submitted to and approved by the Committee.

7.03 Standard. In deciding whether to approve or disapprove plans and specifications submitted to it, the committee shall use its best judgment to insure that all improvements, construction, landscaping, and alterations on Units within the Development conform to and harmonize with existing surroundings and structures. Any structure hereafter constructed on any Unit in replacement of the structure previously located thereon shall be constructed in substantially the same configuration, location and architectural style and be approximately the same size as the prior structure, and if the plans and specifications therefore meet such criteria, the Committee must approve the same.

7.04 Approval Procedure. Any plans and specifications submitted to the Committee shall be approved or disapproved by it in writing within thirty (30) days after submission, provided, however, that plans and specifications for any replacement structure to be constructed in substantially the same configuration, location and architectural style and to be of substantially the same size as its predecessor shall be approved or disapproved within ten (10) days after submission. In the event the Committee fails to take any action within such specified periods, it shall be deemed to have approved the material submitted except in those respects that such

material is not in conformity with the provisions of this Declaration, as to which respects it shall be deemed disapproved.

7.05 Construction. Once begun, any improvements, construction, landscaping, or alterations approved by the Committee shall be diligently prosecuted to completion. If reasonably necessary to such improvement, construction, landscaping, or alteration, the person carrying out the same shall be entitled to temporarily use and occupy portions of the Common Areas in the vicinity of the activity provided that they shall promptly restore such areas to their prior condition when the use thereof is no longer required.

7.06 Liability for Damages. Neither the Committee nor any member thereof shall be held liable for damages by reason of any action, inaction, approval, or disapproval taken or given without malice by such member or the Committee with respect to any request made pursuant to this Article VII.

7.07 Declarant's Obligation. Declarant hereby covenants in favor of each Owner (a) that all Buildings to be erected by it and all improvements of the Common Areas to be accomplished by it in the Development will be architecturally compatible with respect to one another, and (b) that on the date on which this Declaration is filed for record in the office of the County Recorder of Utah County, Utah, all Units and Common Areas of the Development will be located approximately in the locations shown on the Plat. Declarant shall have no obligations hereunder other than such obligation.

ARTICLE XIII

INSURANCE

8.01 Hazard Insurance. The Board shall procure and maintain a policy or policies of hazard insurance in an amount or amounts equal to or exceeding the full replacement value (exclusive of the value of land, foundations, excavation and other items normally excluded from coverage) of the Common Areas owned by the Association with an Agreed Amount Endorsement or its equivalent, if available, or an Inflation Guard Endorsement and such other endorsements as the Board may deem to be reasonable. Such insurance policy or policies shall name the Association as insured for the benefit of the Owners and shall afford protection, to the extent applicable, against at least the following

- (1) loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by vandalism, malicious mischief, windstorm, and water damage, and
- (2) such other risks as shall customarily be covered with respect to facilities similar in construction, location and use.
- (3) deductible shall be \$1,000 or less.

- (4) each Building owner shall be responsible to purchase a residential owners policy covering the Building and contents owned by such Owner. All claims for damage to an individual's Unit must be submitted first on their policy. The Association will not be required to file claims for damage that would have been covered under an owners policy.

8.02 Liability Insurance. The Board shall procure and maintain a policy or policies (herein called the "Policy") of Public Liability Insurance to insure the Association, the Board, the Managing Agent and employees of the Association, if any, and the Owners against claims for bodily injury and property damage arising out of the conditions of the Common Areas or activities thereon under a Comprehensive General Liability form. Such insurance shall be for such limits as they may decide, but not less than those limits customarily carried in connection with properties of comparable character and usage in the County of Utah nor less than \$500,000 for personal injury and property damage arising out of a single occurrence, such coverage to include protection against water damage liability, liability for non-owned and hired automobile, liability for the property of others and such other risks as shall customarily be covered with respect to property similar in construction, location and use. The policy shall contain a "Severability of Interest" endorsement which shall preclude the insurer from denying the claim of any Owner because of negligent acts of the Association or other Owners and a cross-liability endorsement pursuant to which the rights the named insureds as between themselves are not prejudiced. The policy shall provide that the policy may not be canceled or substantially modified by the insurer unless it gives at least thirty (30) days prior written notice therefore to each insured. Any such coverage procured by the Board shall be without prejudice to the right of the Owners to insure their personal liability for their own benefit at their own expense.

8.03 Additional Insurance; Further General Requirements. The Board may also procure insurance, which shall insure the Common Areas, and the Association or the Owners and others against such additional risks as the Board may deem advisable. Insurance procured and maintained by the Board shall not require contribution from insurance held by any of the Owners or their Mortgagees. Each policy of insurance obtained by the Board shall, if reasonably possible, provide:

- (1) a waiver of the insurer's right of subrogation against the Association, the Owners and their respective directors, officers, agents, employees, invitees and tenants.
- (2) that it cannot be canceled, suspended or invalidated due to the conduct of any particular Owner or Owners.
- (3) that it cannot be canceled, suspended or invalidated due to the conduct of the Association without a prior written demand that the defect be cured, and
- (4) that any "no other insurance" clause therein shall not apply with respect to insurance maintained individually by any of the Owners.

ARTICLE IX

RIGHTS OF MORTGAGEES

9.01 Title and Mortgagee Protection. A breach of any of the covenants, provisions, or requirements of this Declaration shall not result in any forfeiture or reversion of title or of any other interest in a Unit or any other portion of the Property. A breach of any of the covenants, provisions, or requirements of this Declaration shall not defeat, impair, or render invalid the lien of or other rights under any Mortgage. Unless and until it enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu thereof, any Mortgagee interested under any Mortgage affecting a Unit or any other portion of the Property shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, any of the covenants, provisions, or requirements of this Declaration (other than those, if any, concerning a consent or approval to be given by a Mortgagee, in the event a Mortgagee's failure to give same is wrongful). No amendment to this Declaration shall in any way affect the rights of any Mortgagee interested under a Mortgage which is in effect at the time of the amendment concerned or the rights of any successor in interest or title to such Mortgagee, either before or after such Mortgagee or its successor enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu thereof, unless such Mortgagee has consented in writing to such amendment.

9.02 Preservation of Common Areas. The Common Areas shall remain substantially of the same character, type and configuration as when such Common Areas became part of the Development Unless the Association shall receive the prior written approval of (a) all first Mortgagees of Units and (b) the Owners of all Units. The Association shall not be entitled by act or omission to abandon, partition, subdivide, encumber, sell, transfer or materially modify the Common Areas, except to grant reasonable easements for utilities and similar or related purposes.

9.03 Notice of Matters Affecting Security. The Association shall give written notice to any Mortgagee of a Unit requesting such notice whenever

- (1) there is any material default by the Owner of the Unit subject to the Mortgage in performance of any obligation under this Declaration or the Articles of the Association which is not cured within sixty (60) days after default occurs, or
- (2) damage to the Common Areas from any one occurrence exceeds \$10,000, or
- (3) there is any condemnation or taking by eminent domain of any material portion of the Common Areas

9.04 Notice of Meetings. The Board shall give to any Mortgagee of a Unit requesting the same, notice of all meetings of the Association, and such Mortgagee shall have the right to designate in writing a representative to attend all such meetings.

9.05 Right to Examine Association Records. Any Mortgagee shall, upon request, have the same right to inspect the books and records of the Association and receive financial statements as the Owner of the Unit secured by the Mortgage.

9.06 Right to Pay Taxes and Charges. Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any portion of the Common Areas and may pay overdue premiums on insurance policies pertaining to the Common Areas, or secure new insurance coverage pertaining to the Common Areas on the lapse of a policy, and Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

9.07 No Priority Accorded. No provision of this Declaration gives or may give a Unit Owner or any other party priority over any rights or Mortgagees pursuant to their respective Mortgages in the case of a distribution to Unit Owners of insurance proceeds or condemnation awards for loss to or taking of Units and/or the Common Areas.

9.08 Construction. In the event another provision or clause of this Declaration deals with the same subject matter as is dealt with in any provision or clause of this Article IX, the provision or clause which results in the greatest protection and security for a Mortgagee shall control the rights, obligations, or limits of authority, as the case may be, applicable to the Association with respect to the subject concerned.

ASSOCIATION BYLAWS

THE ASSOCIATION'S BYLAWS ARE HEREBY EMBODIED IN THIS DECLARATION AS ARTICLES XI, XII AND XIII. THE MISCELLANEOUS PROVISIONS OF ARTICLE XIV OF THIS DECLARATION SHALL BE APPLICABLE TO BOTH THE DECLARATION AND BYLAWS PROVISIONS, AS THE CASE MAY BE.

ARTICLE XI

BYLAWS

MEMBERSHIP AND MEETINGS

11.01 Membership. Every Owner, upon acquiring title to a Unit, shall automatically become a member of the Association and shall remain a member thereof until such time as his/her ownership of such Unit ceases for any reason, at which time his/her membership in the

Association with respect to such Unit 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 Unit.

11.02 Voting Right. . There shall be two classes of Members. The Declarant shall be a Class B Member and shall be entitled to three (3) votes for each Unit owned by it. All other entities owning Units shall be Class A Members and shall be entitled to two (2) votes for each Unit owned by them. In the event that a Unit is owned by more than one entity, the entities shall allocate between them the two (2) votes attributable to each Unit.

11.03 Multiple Ownership Interests. In the event there is more than one Owner of a particular Unit, the vote relating to such Unit 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 Unit be cast with respect to any issue. A vote cast at any Association meeting or by written consent by any of such Owner, whether in person or by proxy, shall be conclusively presumed to be the entire vote attributable to the Unit concerned unless an objection is made at the meeting or in writing by another Owner of the same Unit, which event no vote will be counted with respect to such Unit except to determine the presence or absence of a quorum.

11.04 Records of Ownership. Every Owner shall promptly cause to be duly filed of record the conveyance document (or in the case of contract buyer, a copy of the sales contract or notice of interest) to him of his/her Unit and shall file a copy of such conveyance document with the Secretary of the Association, who shall maintain a record of ownership of the Units. Any Owner who mortgages his/her Unit 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 Utah County Recorder regarding the Owners and Mortgagees of Units.

11.05 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.

11.06 Annual Meetings. Annual meetings of the membership of the Association shall be held each calendar year beginning in the year 2004 on such day and time as is agreed upon by the Board and set forth in the notice therefor. At such annual meetings there shall be elected directors 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.

11.07 Special Meetings. The President shall call a special meeting of the Owners as directed by a unanimous resolution of the Board upon the request of Owners holding at least seventy-five percent (75%) of the total votes of the Association. No business shall be transacted at a special meeting except as stated in the notice therefor unless consented to by seventy-five percent (75%) or more of the Owners present, either in person or by proxy.

11.08 Notice of Meetings. The Secretary shall mail or deliver 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 twenty-four (24) hours prior to such meeting. The mailing of notice by prepaid U S Mail or by delivery in person shall be considered notice served.

11.09 Quorum. 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 must be entitled to cast seventy-five percent (75%) of the total Association votes eligible to vote.

11.10 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 forty-eight (48) hours from the time the original meeting was called, at which time the requirements for a quorum shall be reduced by one-half that required in Section 11.09.

11.11 Officers. The Association shall have a President, a Vice President and a Secretary/Treasurer all of whom shall be elected by and from the Board. More than one office may be filled by the same person. The officers shall be elected by the Board in an organizational meeting of the Committee immediately following each annual meeting of Owners at which the new Board has been elected.

- (1) **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.
- (2) **Vice President.** The Vice President shall take the place of the President and perform his/her 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.
- (3) **Secretary.** The Secretary shall keep the minutes of all meetings of the Board and the minutes of all meetings of the Association. He shall have charge of such books and records as the Board may direct and he shall, in general, perform all duties incident to the office of secretary of a similar type association.
- (4) **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. He 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 deposits as may from time to time be designated by the Board.

11.12 Initial Composition of Board. Declarant alone shall have the right to select the initial Board of Directors which may be composed of up to four (4) Directors, all of whom need be Owners. Such right of the Declarant to appoint the Board shall remain in Declarant until Declarant is no longer an owner of a Unit.

11.13 Board of Directors: Composition, Election, Vacancies. The Association, through its Board of Directors, is responsible for the maintenance of any Common Areas, the determination, imposition and collection of Assessments, the enforcement of the provisions of this Declaration and, in general, the preservation of the residential quality and character of the Development to the benefit and general welfare of the Owners. Subject to the provisions of Section 11.12, the Board shall be composed of four Directors, each of whom shall be an Owner (or officer, director, or agent of a non-individual Owner). The Owners may increase the maximum number of Directors to and including seven (7) at any meeting of Association members. Vacancies on the Board shall be filled by the Owners, and such appointees shall serve until the next annual meeting of Owners.

11.14 Board Meetings, Quorum, Board Action. The Board of Directors may 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 Directors 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 consent of all current Directors.

11.15 Deadlock. In the event of deadlock on an issue before the Board of Directors, the issue shall be submitted for arbitration by a third party to be agreed upon by a majority of members of the Board.

ARTICLE XII

BYLAWS

DUTIES AND POWERS OF THE ASSOCIATION

12.01 Duties of the Association. Without limiting any other duties which may be imposed upon the Association by its Articles of Incorporation, 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 Property.

- (1) The Association shall accept all Owners as members of the Association.
- (2) The Association shall accept title to all Common Areas conveyed to it, whether by Declarant or by others, provided the same is free and clear of

liens and encumbrances.

- (3) The Association shall maintain, repair, replace and landscape the Common Areas.
- (4) 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 Areas, provided that the Association shall have the right to contest or compromise any such taxes or assessments.
- (5) The Association shall obtain and maintain in force the policies of insurance required of it by the provisions of the Declaration.
- (6) The Association may employ a reasonable corporation, partnership, firm, person or other entity as the Managing Agent to manage and control the Common Areas, 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 thirty (30) days' written notice thereof, and the term of any such agreement may not exceed one (1) year, renewable by agreement of the parties for successive periods of one (1) year each. Any Managing Agent may be an agent or employee of the Association or an independent contractor, as the Board deems appropriate.

12.02 Powers and Authority of the Association. The Association shall have all the powers set forth in its Articles of Incorporation 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, including the power to levy and collect assessments as hereinafter provided. Without in any way limiting the generality of the foregoing, the Association shall have the following powers:

- (1) At any time and from time to time and without liability to any Owner for trespass, damage or otherwise, to enter upon any Unit for the purpose of maintaining and repairing such Unit or any improvement thereon if for any reason the Owner fails to maintain and repair such Unit 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.

- (2) In fulfilling any of its duties under the Declaration, including its duties for the maintenance, repair, operation or administration of the Common Areas and Units (to the extent necessitated by the failure of the Owners of such Units) or in exercising any of its rights to construct improvements or other work upon any of the Common Areas, the Association shall have the power and authority to obtain, contract and pay for, or otherwise provide for:
 - (1) Construction, maintenance, repair and landscaping of the Common Areas on such terms and conditions as the Board shall deem appropriate,
 - (2) 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,
 - (3) Such Common Area related utility services as the Board may from time to time deem necessary or desirable,
 - (4) The services of architects, engineers, attorneys and certified public accountants and such other professional or nonprofessional services as the Board may deem desirable,
 - (5) Fire, police and such other protection services as the Board may deem desirable for the benefit of the Owners or any of the Property, and
 - (6) Such materials, supplies, furniture, equipment, services and labor as the Board may deem necessary.

12.03 Association Rules. 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 Areas, (b) the use of any roads or utility facilities owned by the Association, (c) the collection and disposal of refuse, (d) uses and nuisances pertaining to the Property, and (e) all other matters concerning the use and enjoyment of the Property and the conduct of Owners and their invitees within the Development

12.04 Limitation of Liability. Neither the declarant nor any member of the Board acting in good faith shall be personally liable to any Owner, guest, lessee 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 XIII**BYLAWS****ASSESSMENTS**

13.01 Personal Obligation and Lien. Each Owner shall, by acquiring or in any way becoming vested with his/her interest in a Unit, be deemed to covenant and agree to pay to the Association the annual, special assessments and Reimbursement Assessments described in this Article, 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 Unit with respect to which such assessment is made until fully paid, and (b) the personal, joint and several obligation of the Owner or Owners of such Unit at the time the assessment falls due. No Owner may exempt himself or his/her Unit from liability for payment of assessments by waiver of his/he rights in the Common Areas or by abandonment of his/her Unit. In a voluntary conveyance of a Unit, the grantee shall be jointly and severally liable with the grantor for all such unpaid assessments, late payments fees, interest and costs of collection, including reasonable attorney's fees, which shall be a charge on the Unit 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.

13.02 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 Areas. The use made by the Association of funds obtained from assessments may include, but shall not be limited to, payment of the cost of taxes and insurance on the Common Areas, establishment and finding of a reserve to cover major repair or replacement of improvements within the Common Areas, and any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions or purposes under the Declaration or its Articles of Incorporation, Bylaws or rules and regulations.

13.03 Annual Assessments. Annual assessments shall be computed and assessed against all Units in the Development based upon advance estimates of the Association's cash requirements to provide for payment of the cost of those items set forth in Section 13.02, above.

13.04 Annual Budget. Annual assessments shall be determined on the basis of a fiscal year beginning January 1 and ending December 31 next following, provided that first fiscal year shall begin on the date of recordation of this Declaration. On or before December 15 of each fiscal year the Association 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 thirty (30) days of such Owner's initial purchase. The budget shall itemize the estimated cash requirements for such fiscal year, anticipated receipts, reserves, 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.

13.05 Notice and Payment of Annual Assessments. Except with respect to the fiscal period ending December 31, 2004, the Association shall notify each Owner as to the amount of the annual assessment against his/her Unit 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 twelve (12) equal monthly installments, one such installment due on the first day of each calendar month during the fiscal year to which the assessment relates, provided, however, the annual assessments for the fiscal period ending December 31, 2003, shall be based upon such portion of the calendar year 2003 as follows the date of recordation of the Declaration and shall be payable in such installments and at such times as the Association, in the sole discretion of its Board of Directors, may determine. The failure of the Association to give timely notice of any annual assessment as provided herein shall not be deemed a waiver or modification in any respect of the provisions of the Declaration, or a release of any Owner from the obligation to pay such assessment or any other assessment, but the date when the payment shall become due in such case shall be deferred to a date fifteen (15) days after notice of such assessment shall have been given to the Owner in the manner provided in the Declaration.

13.06 Initial Fee. In addition, each Owner (other than Declarant), shall be required to prepay at the time of purchase of his/her Building, whether as a first time or subsequent Owner, a sum equal to the then monthly installment of the annual assessment which sum shall be in addition to any proration of assessment which may be due for the month in which such purchase takes place. Such fees shall become part of the Association's general fund to be utilized as necessary.

13.07 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 the Common Areas. Any such special assessment shall be apportioned among and assessed to all Units in the same manner as annual assessments. Such special assessments must be assented to by a majority 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 ten (10) but no more than thirty (30) days prior to the meeting date.

13.08 Uniform Rate of Assessment. All monthly and special assessments authorized by Sections 13.03 and 13.08, respectively, shall be fixed at a uniform rate for all Units.

13.09 Quorum Requirements. The quorum at any Association meeting required for any action authorized by Section 13.08, above, shall be as follows. At the first meeting called, the presence of Owners of or proxies entitled to cast sixty percent (60%) of the total votes of the Class A membership 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 13.08, above) at which a quorum shall be one-half (1/2) of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting.

13.10 Reimbursement Assessment on Specific Unit. In addition to the annual assessment and any special assessment authorized pursuant to Section 13.08, above, the Board may levy at any time Reimbursement Assessments (a) on every Unit especially benefitted (i.e., benefitted to a substantially greater degree than any other Unit) by any improvement to adjacent roads, sidewalks, planting areas or other portions of the Common Areas made on the written request of the Owner of the Unit to be charged, (b) on every Unit the Owner or occupant of which shall cause any damage to the Common Areas necessitating repairs, and (c) on every Unit 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 Reimbursement 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 Units according to the magnitude of special benefit or cause of damage or maintenance or repair work or enforcement 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 or operation obligations of the Association, it shall not give rise to a Reimbursement Assessment against the Units benefitted.

13.11 Certificate Regarding Payment. Upon the request of any Owner or prospective purchaser or encumbrance of a Unit 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 Unit 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.

13.12 Effect of Nonpayment; Remedies. Any assessment (whether annual, special or Reimbursement Assessment) not received within ten (10) days of the date on which it becomes due shall be subject to a late charge equal to 5% thereof, which together with interest and costs of collection shall be, constitute, and remain a continuing lien on the affected Unit. If any assessment is not received within ten (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 and one-half percent (1 1/2%) per month, and the Association may bring an action against the Owner who is personally liable therefor or may foreclose its lien against the Unit, or both. Any judgement 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.

13.14 Subordination of Lien to First Mortgages. The lien of the assessments provided herein shall be subordinate to the lien of any first 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 purchaser who comes into possession of or becomes the Owner of a Unit

by virtue of the foreclosure of such first Mortgage or the exercise of a power of sale under such first Mortgage, or by deed in lieu of foreclosure, shall take free of such assessment lien as to any assessment installment which accrues or becomes due prior to the time such holder or purchaser comes into possession or ownership of such Unit, provided that in the extent there are any proceeds of the sale on foreclosure of such first 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 first Mortgage, the lien shall apply to such excess. No sale or transfer of a Unit in connection with any foreclosure of a first Mortgage shall relieve any Unit from the lien of any assessment installment thereafter becoming due.

13.15 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 Areas of the Development, or any part thereof, 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.

13.16 Sprinklers. Separate metering of water for each Unit shall include not only costs of water used within the Unit, but also costs of approximately one-half (1/2) of water used by sprinklers for the Common Areas. Approximately one-half (1/2) of the sprinklers on the Common Areas have been attached to the metering systems for each Unit. In the event that the sprinkling system is expanded, decreased, or modified, the proportion of sprinklers attached to each Unit's metering system shall be kept as equal as possible.

ARTICLE XIV

BYLAWS

MISCELLANEOUS

14.01 Notice. 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 Director of the Association. Any notice required or permitted to be given to the Architectural Control Committee may be given by delivering or mailing the same to the Managing Agent or the Association or any member of the Architectural Control Committee.

14.02 Amendment. Except as provided below, this Declaration may be amended by, but only by, an instrument recorded in Utah County, Utah, which is executed by Owners (including Declarant) who collectively hold at least sixty percent (60%) of the total outstanding votes in the Association. The foregoing right of amendment shall, however be subject to the right to

supplement this Declaration in the manner and to the extent provided for in Article III of this Declaration. In addition, such right of amendment shall be subject to the following qualification: 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), or to a Mortgagee or the Association shall be accomplished or effective unless the instrument through which such amendment is purported to be accomplished is consented to in writing by Declarant, or by such Mortgagee, as the case may be.

14.03 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 Association, unless a higher percentage or a greater number is required by law. The following additional provisions shall govern any application of this Section 14.03:

- (1) All necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by any Owner.
- (2) 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.
- (3) Any change in ownership of a Unit, which occurs after consent has been obtained from the Owner thereof, shall not be considered or taken into account for any purpose.
- (4) Unless the consent of all Owners whose memberships are appurtenant to the same Unit is secured, the consent of none of such Owners shall be effective.

14.04 Declarant's Rights Assignable. All or any portion of the rights of Declarant under this Declaration or in any way relating to the Property may be assigned.

14.05 Interpretation. The captions, which precede the Articles and Sections of this Declaration, are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, and any gender shall include both other genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof, 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.

14.06 Condemnation. If at any time or times an insubstantial or minor part of the Common Areas 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

shall be used by the Association to the extent necessary for restoring or replacing any improvements on the remainder of the Common Areas. In the event of any other taking or condemnation, the interests of the Association, the Owners and Mortgagees shall be as they may appear.

14.07 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 heretofore acquired or hereafter acquire any interest in a Unit, their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or occupant of a Unit or Building shall comply with, and all interests in all Units or in the Common Areas shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, and determinations contemplated by this Declaration. By acquiring any interest in a Unit or Building, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

14.08 Enforcement of Restrictions. The following persons shall have the right to exercise or seek any remedy at law or inequity to interpret, to enforce compliance with or to obtain redress for violation of this Declaration:

- (1) Any Owner,
- (2) The Association, or
- (3) Any Mortgagee

The prevailing party in an action for the interpretation of, the enforcement of or to obtain redress for violation of any provisions of this Declaration shall be entitled to collect court costs and reasonable attorney's fees.

14.09 Duration. This Declaration shall remain in effect until such time as there is recorded in Utah County, Utah, an instrument of termination which is executed by all of the parties required by Section 14.02 hereof, plus the Mortgagee of each and every Unit.

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

