

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

KELVINGROVE HOMEOWNERS ASSOCIATION, INC.

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (the "Declaration") made this 20<sup>th</sup> day of March 2000, by KELVINGROVE L.L.C., a Utah limited liability company (the "Declarant").

**RECITALS**

A. The Declarant is the owner of certain land in Utah County, Utah, shown on the plat entitled, "KELVINGROVE SUBDIVISION" to be recorded among the Recorder's Office of Utah County, Utah, Recorder's Office (the "Recorder's Office"), in Plat Book \_\_\_\_\_ No. \_\_\_\_\_, Folio \_\_\_\_\_.

B. It is the intention of the Declarant to develop the land as a residential community, and to insure therefor a uniform plan and scheme of development, and unto that end the Declarant has adopted, imposed and subjected the property hereinafter described to certain covenants, conditions, restrictions, easements, charges and liens (collectively, the "Covenants"), as set forth herein for the following purposes:

(1) To insure uniformity in the development of the Lots (as hereinafter defined) in the Community (as hereinafter defined).

(2) To facilitate the sale by the Declarant, its successors and assigns, of the land in the Community by reason of its ability to assure such purchasers of uniformity.

(3) To make certain that the Covenants shall apply uniformly to all Lots for the mutual advantage of the Declarant, the Owners and any Mortgagee (as such capitalized terms are defined herein) and to all those who may in the future claim title through any of the above.

(4) To provide for the benefit of the Owners, the preservation of the value in the Community, including and enforcing all applicable covenants and restrictions, and collecting and disbursing the assessments and charges hereinafter created; which association shall be incorporated under the laws of the State of Utah, as a nonprofit corporation, for the purpose of exercising the functions as aforesaid.

**NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:**

THAT the Declarant does hereby establish and impose upon the Property (as hereinafter defined), the Covenants for the benefit of and to be observed and enforced by the Declarant, its successors and assigns, as well as by all purchasers of Lots, to wit:

**ARTICLE I**  
**DEFINITIONS**

The following words when used in this Declaration (unless the context otherwise requires) shall have the following meanings:

1.1 "Association" shall mean and refer to the KelvinGrove Homeowners Association, Inc.

1.2 "Builder" shall mean any person or entity other than the Declarant, which shall, in the ordinary course of such person's business, construct a dwelling on a Lot and sell or lease it to another person to occupy as such person's residence.

1.3 "Community" shall mean and refer to all of the land hereby made subject to this Declaration by an instrument in writing, duly executed and recorded among the Recorder's Office and any Additional Property (as such term is hereinafter defined) that may hereafter expressly be made subject to this Declaration by an instrument in writing, duly executed and recorded among the Recorder's Office.

1.4 "Declarant" shall mean and refer to KelvinGrove L.L.C., and any successor or assign thereof to whom it shall expressly (a) convey or otherwise transfer all of its right, title and interest in the Property as an entirety, without reservation of any kind; or (b) transfer, set over and assign all of its right, title and interest under this Declaration, or any amendment or modification thereof.

1.5 "Development Period" shall mean the time between the date of recordation of this Declaration among the Recorder's Office and the date on which the Class B membership in the Association converts to a Class A membership as described in Article IV.

1.6 "Lot" and/or "Lots" shall mean and refer to those portions of the Property that are subdivided parcels of land shown and defined as lots or plots of ground and designated by numerals on the Plat, on which a dwelling is proposed to be constructed. "Lots" shall include both Townhouse Lots and Single-family Lots (as such terms are hereinafter defined).

1.7 "Mortgage" means any mortgage or deed of trust encumbering any Lot and any other security interest existing by virtue of any other form of security instrument or arrangement, provided that such mortgage, deed of trust or other form of security instrument, and an instrument evidencing any such other form of security arrangement, has been recorded among the Recorder's Office.

1.8 "Mortgagee" means the person secured by a Mortgage.

1.9 "Plat" shall mean and refer to the plat entitled, "KELVINGROVE SUBDIVISION" to be recorded among the Recorder's Office of Utah County, Utah, and any plats recorded among the Recorder's Office in substitution therefor or amendment thereof, plus any plats hereafter recorded among the Recorder's Office of any Additional Property that may hereafter expressly be made subject to this Declaration by an instrument in writing, duly executed, and recorded among the Recorder's Office.

1.10 "Property" shall mean and refer to all of the real property described in Exhibit A attached hereto, and any additional land at such time as it is hereafter expressly made subject to this Declaration by an instrument in writing, duly executed and recorded among the Recorder's Office.

1.11 "Owner" shall mean, refer to and include the person, firm, corporation, trustee, or legal entity, or the combination thereof, including contract sellers, holding the fee simple record title to a Lot, as said Lot is now or may from time to time hereafter be created or established, either in his, her, or its own name, as joint tenants, tenants in common, tenants by the entireties, or tenants in copartnership, if the Lot is held in such real property tenancy or partnership relationship. If more than one (1) person, firm, corporation, trustee, or other legal entity, or any combination thereof, hold the record title to any one (1) Lot, whether it is in a real property tenancy, or partnership relationship, or otherwise, all of the same, as a unit, shall be deemed a single Owner and shall be or become a single member of the Association by virtue of ownership of such Lot. The term "Owner", however, shall not mean, refer to or include any contract purchaser nor shall it include a Mortgagee.

1.12 "Single-family Lot" shall mean and refer to those Lots upon which there are constructed a single-family detached dwellings.

1.13 "Structure" means any thing or device the placement of which upon the Property (or any part thereof) may affect the appearance of the Property (or any part thereof) including, by way of illustration and not limitation, any building, trailer, garage, porch, shed, greenhouse, bathhouse, coop or cage, covered or uncovered patio, clothesline, radio, television or other antenna or "dish", fence, sign, curbing, paving, wall, roadway, walkway, exterior light, landscape, hedge, trees, shrubbery, planting, signboard or any temporary or permanent

living quarters (including any house trailer), or any other temporary or permanent improvement made to the Property or any part thereof. "Structure" shall also mean (i) any excavation, fill, ditch, diversion, dam or other thing or device which affects or alters the natural flow of surface waters from, upon or across the Property, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across the Property, and (ii) any change in the grade of the Property (or any part thereof) of more than six inches (6") from that existing at the time of first ownership by an Owner hereunder other than the Declarant.

## ARTICLE II COVENANTS, CONDITIONS AND RESTRICTIONS

2.1 **ADMINISTRATION; ARCHITECTURAL REVIEW COMMITTEE.** The Architectural Review Committee, which shall be appointed by the Declarant during the Development Period and thereafter by the Board of Directors of the Association (the "Architectural Review Committee") shall have all the rights, powers and duties granted to it pursuant to this Declaration. The member has the obligation of obtaining all local municipal and/or government building approval(s) that may be necessary for any architectural change(s). The initial members of the Architectural Review Committee are John Aldous, David Irwin and Gordon Etter. The Architectural Review Committee shall at all times be comprised of at least three (3) members. At any time, or from time to time, during the Development Period, the initial members of the Architectural Review Committee may be replaced for any reason (including death or resignation) with other individuals selected by the Declarant in its sole discretion. All questions shall be decided by a majority of the members of the Architectural Review Committee, and such majority shall be necessary and sufficient to act in each instance and on all matters. Each member of the Architectural Review Committee, now or hereafter appointed, shall act without compensation for services performed pursuant to this Declaration. The Declarant hereby grants to the Architectural Review Committee, its successors and assigns, the right to establish architectural design criteria for the Community (the "Design Guidelines") which shall be made available to all members, and to waive such portion or portions of the Covenants numbered 2.3 through 2.23 of this Article II as the Architectural Review Committee, in its sole discretion, may deem advisable and in the best interests of the Community.

### 2.2 **ARCHITECTURAL REVIEW.**

(a) No Structure (other than construction or development by, for or under contract with Declarant) shall be constructed on any Lot nor shall any addition (including awnings and screens), change, or alteration therein or thereto (including any retreatment by painting or otherwise of any exterior part thereof unless the original color and material are used) (collectively, "Alterations") be made to the exterior of any Structure and/or contour of any Lot, nor shall any work be commenced or performed which may result in a change of the exterior appearance of any Structure until the plans and specifications, in duplicate, showing the nature, kind, shape, dimensions, material, floor plans, color scheme, location, proposed topographical changes, together with the estimated costs of said Alterations or construction, the proposed construction schedule, and a designation of the party or parties to perform the work, have been submitted to and approved in writing by the Architectural Review Committee, its successors and assigns, and until all necessary permits and any other governmental or quasi-governmental approvals have been obtained. The approval of the Architectural Review Committee of any Structure or Alterations shall in no way be deemed to relieve the Owner of any Lot from its obligation to obtain any and all permits and approvals necessary for such Structure or Alterations.

(b) The Architectural Review Committee shall consider applications for approval of plans, specifications, etc., upon the basis of conformity with this Declaration, applicable law and the Design Guidelines, if any, and shall be guided by the extent to which such proposal will insure conformity and harmony in exterior design and appearance, based upon, among other things, the following factors: the quality of workmanship; nature and durability of materials; harmony of external design with existing structures; choice of colors; changes in topography, grade elevations and/or drainage; the ability of the party or parties designated by the Owner to complete the Structure or Alterations proposed in accordance with this Declaration, including, without limiting the foregoing, such factors as background, experience, skill, quality of workmanship, financial ability; factors of public health and safety; the effect of the proposed Structure or Alterations on the use, enjoyment and value of other neighboring properties, and/or on the outlook or view from adjacent or neighboring properties; and the

suitability of the proposed Structure or Alterations with the general aesthetic appearance of the surrounding area.

(c) The Architectural Review Committee shall have the right to refuse to approve any such plans or specifications, including grading and location plans, which are not suitable or desirable in its opinion, for aesthetic or other considerations. Written requests for approval, accompanied by the foregoing described plans and specifications or other specifications and information as may be required by the Architectural Review Committee from time to time shall be submitted to the Architectural Review Committee by registered or certified mail or in person. In the event the Architectural Review Committee fails to approve or disapprove any plans within sixty (60) days of receipt thereof, such plans shall be deemed approved. Approval of any particular plans and specifications or design shall not be construed as a waiver of the right of the Architectural Review Committee to disapprove such plans and specifications, or any elements or features thereof, in the event such plans and specifications are subsequently submitted for use in any other instance. The Architectural Review Committee shall have the right to charge a processing fee, not in excess of Fifty Dollars (\$50.00), for such requests, which shall be retained by the Association and not the Architectural Review Committee.

(d) Construction of Alterations in accordance with plans and specifications approved by the Architectural Review Committee pursuant to the provisions of this Article shall be commenced within six (6) months following the date of approval and completed within twelve (12) months of commencement of the Alterations, or within such other period as the Architectural Review Committee shall specify in its approval. In the event construction is not commenced within the period aforesaid, then approval of the plans and specifications by the Architectural Review Committee shall be conclusively deemed to have lapsed and compliance with the provisions of this Article shall again be required. After construction, all Structures and Alterations shall be maintained continuously in strict conformity with the plans and specifications so approved and all applicable laws.

(e) If any Structure is altered, erected, placed or maintained on any Lot other than in accordance with approved plans and specifications therefor and applicable law, such action shall be deemed to be a violation of the provisions of this Declaration and, promptly after the Association gives written notice thereof to its Owner, such Structure shall be removed or restored to its condition prior to such action, and such use shall cease, so as to terminate such violation. If within thirty (30) days after having been given such notice, such Owner has not taken reasonable steps to terminate such violation, any agent of the Association may enter upon such Lot and take such steps as are reasonably necessary to terminate such violation. Such Owner shall be personally liable to the Association for the cost thereof, to the same extent as he is liable for an Assessment levied against such Lot, and, upon the failure of the Owner to pay such cost within ten (10) days after such Owner's receipt of written demand therefor from the Association, the Association may establish a lien therefor upon such Lot in accordance with and subject to the provisions of this Declaration applicable to an assessment lien.

(f) Any member of the Architectural Review Committee, upon the occurrence of a violation of the provisions of this Declaration, and after the Association or the Architectural Review Committee gives written notice thereof to the Owner of the applicable Lot, at any reasonable time, may enter upon and inspect any Lot and the exterior of any Structure thereon to ascertain whether the maintenance, construction or alteration of such Structure or Alteration are in accordance with the provisions hereof.

(g) All Structures on a Lot shall be made, constructed and maintained, and all activities on a Lot shall be undertaken, in conformance with all laws and ordinances of the City of Springville, Utah County, and State of Utah which may apply, including without limiting the generality of the foregoing, all zoning and land use ordinances.

2.3 **LAND USE.** The Lots, except as hereinafter provided, shall be used for private and residential purposes only and no dwelling of any kind whatsoever shall be erected, altered or maintained thereon except a private dwelling house for the sole and exclusive use of the Owner or occupant of the Lot. None of the Lots shall at any time be used for apartments or other types of multiple housing units; it being the intention of the Declarant that each and every one of the Lots be used solely for one (1) single-family dwelling, and no other purposes, except such purposes as may be specifically reserved in the succeeding sections of this Declaration. No industry, business, trade or profession of any kind, whether or not for profit, shall be conducted, maintained or permitted

on any part of the Property, except that any part of any Structure now or hereafter erected on any Lot may be used as an office or studio, provided that (i) the person using such office or studio actually resides in the Structure in which such office or studio is located, (ii) such office or studio is operated in full compliance with all applicable zoning and other laws, (iii) the operation of such office or studio does not involve the employment of any more than one (1) non-resident employee, (iv) the person owning such Lot has obtained the prior written approval of the Architectural Review Committee, and (v) such office or studio does not occupy more than twenty-five percent (25%) of the total floor area of such Structure.

2.4 **SWIMMING POOLS.** No swimming pools, whether "in ground", "above ground" or other type, shall be permitted on any Lot; provided, however, that "in ground" pools may be allowed on Single-family Lots if all applicable local laws are satisfied and approval from the Architectural Review Committee has been obtained in advance for construction of the pool and fencing location and materials.

2.5 **DRIVEWAYS.** No driveways or parking areas shall be permitted on any Lot in the Community, excluding, however, those Lots which have garages that have been constructed by the Declarant or Builder.

2.6 **EXTERIOR MATERIALS.** All primary exterior materials of any Structure constructed on a Lot shall be in material approved by the Architectural Review Committee. Every residence in the community shall contain either a porch on the front elevation of the house (this porch shall be six feet (6') deep by at least eight feet (8') in length), or the exterior material of the front elevation of the house shall be all stucco or other masonry materials. In the event the front elevation of the house is stucco or other masonry material, than no porch is required and/or the porch may be of any reasonable dimension.

2.7 **TEMPORARY STRUCTURES.** No Structure of a temporary character, trailer, basement, tent, shack, garage, or other outbuildings shall be used on any Lot at any time as a residence, either temporarily or permanently. Nothing in this Declaration shall be deemed to prohibit an Owner from placing upon its Lot reasonably sized garden sheds, greenhouses or other similar accessory structures approved in advance by the Architectural Review Committee.

2.8 **REAL ESTATE SALES OR CONSTRUCTION OFFICE.** Notwithstanding anything contained herein to the contrary, a real estate sales or construction office or a trailer and/or model home and related signs, may be erected, maintained and operated on any Lot, or in any Structure now or hereafter located thereon, provided such office or trailer, and signs, are used and operated only in connection with the development and/or initial sale of any Lot or Lots, and/or the initial construction of improvements on any Lot now or hereafter laid out or created in the Community. Nothing herein, however, shall be construed to permit any real estate sales or construction office, trailer, or sign after such initial development, sales, and/or construction is completed. Except as expressly permitted herein above, neither any part of any Lot, nor any improvement now or hereafter erected on any Lot, shall be used for any real estate sales or construction office or trailer, nor shall any sign used in conjunction with such uses be erected.

2.9 **CLOTHES LINE.** No exterior clothes dryer, clothes pole or similar equipment shall be erected, installed or maintained on any Lot, nor shall articles of clothing, bedding, etc. be hung outside.

2.10 **TRAFFIC VIEW.** No Structure, landscaping, shrubbery or any other obstruction shall be placed on any Lot so as to block the clear view of traffic on any streets, nor shall any planting be done on any corner Lots closer than twenty feet (20') from either street line that will exceed three feet (3') in height (except shade trees which shall be trimmed so that a clear view may be maintained to the height of eight feet (8')).

2.11 **FRONT LAWN AND LANDSCAPING.** The area within the front of a dwelling shall be kept only as a lawn for ornamental or decorative planting of grass, trees and shrubbery. All front and side yards must be landscaped within one (1) year after the dwelling is occupied. Rear yards shall be landscaped within two (2) years of occupancy of the dwelling. Landscaping for the Lots includes maintenance of a green area between the curb and sidewalk.

2.12 **FENCES AND WALLS.** Except for fences as may be installed and/or constructed by the Declarant or Builder simultaneously with the initial construction of a dwelling on a Lot by the Declarant and/or Builder, no fence, wall or other similar enclosure may be built on the front or side yard of any Lot, except a rear yard fence. The developer is required by Springville City to install fences along the perimeter property line of the entire development. Each Owner shall be responsible for the perpetual maintenance of such fences on their Lot. The height restriction of all enclosures of patios and open gardens, privacy screens and work area screens, shall not exceed six feet (6') in height; however, this restriction shall not apply to retaining walls required by topography, where such enclosures are approved in advance by the Architectural Review Committee and provided they do not extend beyond the minimum building lines to any Lot line and are located to the rear of the front face of the Structure. No fences, walls or hedges shall be erected or placed nearer to any street Lot line than the minimum building line. Such enclosures may extend beyond the minimum building line to a Lot line, provided any such enclosure is fifty percent (50%) "see-through". All gates must open inward onto a Lot and shall not open onto another Lot. All fences and walls (except such fences and walls as may be installed and/or constructed by Declarant or simultaneously with the initial construction of a dwelling on a Lot by Declarant in accordance with plans and specifications approved by Declarant) must receive the prior written approval of the Architectural Review Committee. Any such fence or wall shall be decorative in character (rail, picket, etc.), and not of chain link or chicken wire. The foregoing restriction shall not be construed to prohibit the growth of an ornamental hedge fence, which shall be kept neatly trimmed, and shall be trimmed to a hedge of not more than three feet (3') feet in the front yard of any Lot and the side yard of corner Lots.

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

2.14 **NUISANCES.** No noxious or offensive trade or activity shall be carried on upon any Lot, nor shall anything be done or placed thereon which may become an annoyance or nuisance to the neighborhood or any adjoining property owners. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such properly maintained and operated devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any dwelling or upon the exterior of any other Structure constructed upon any Lot. No snowmobiles, go-carts, motorbikes, trail bikes, other loud-engine recreational vehicles or skateboard ramps shall be run or operated upon any Lot or upon any roadways serving the Property.

2.15 **ANIMALS.** No animals, livestock, or poultry of any kind, including pigeons, shall be raised, bred or kept on any Lot, except that dogs, cats or any household pets, may be kept, provided that they are not kept, bred or maintained for any commercial purpose, and provided that they are kept so as to avoid becoming a nuisance to the neighborhood or to any adjoining property owners, and do not roam unattended on the Property. Household pets shall not include miniature pigs, horses or other hybrid livestock or farm animals. Pets shall be registered, licensed and inoculated as required by law. Owners shall be responsible for the immediate clean up and removal of their pets' waste from any other Lot.

2.16 **VEHICLES.**

(a) Other than private passenger vehicles, vans, trucks or permitted commercial vehicles in regular operation, no other motor vehicles or inoperable, unlicensed, unregistered, junk or junked cars or other similar machinery or equipment of any kind or nature (except for such equipment and machinery as may be

reasonable, customary and usual in connection with the use and maintenance of any Lot) shall be kept on the Property or repaired on any portions of the Property except in emergencies. RV's and recreational trailers are permitted on single-family detached driveways. For the purposes hereof, a vehicle shall be deemed inoperable unless it is licensed, contains all parts and equipment, including properly inflated tires, and is in such good condition and repair as may be necessary for any person to drive the same on a public highway.

(b) No commercial vehicles over 3/4 ton rated capacity ("Commercial Vehicles") shall be left parked on any part of the Property, including, without limitation, any street or Lot, longer than is necessary to perform the business function of such vehicle in the area; it being the express intention of this restriction to prevent the parking of Commercial Vehicles upon the Property, including, without limitation, the streets or Lots in the Community, for a time greater than that which is necessary to accomplish the aforesaid business purpose.

(c) Trailers, buses, tractors or any type of recreational vehicle shall not be parked, stored, maintained or repaired on any Lot or parked upon any streets.

(d) Notwithstanding the above, during construction of dwellings, the Declarant and any Builder may maintain Commercial Vehicles and trailers on the Property for purposes of construction and for use as a field or sales office.

2.17 **LIGHTING AND WIRING.** The exterior lighting on Lots shall be directed downward and shall not be directed outward from, or extend beyond, the boundaries of any Lot. All wiring on any Lot shall be underground.

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

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

(b) In determining whether to grant any approval pursuant to this Section, neither Declarant, the Architectural Review Committee nor the Board of Directors shall withhold such approval, or grant it subject to any condition, if and to the extent that doing so would result in an impairment; provided however, that any Small Antenna shall be placed in the rear of each dwelling, notwithstanding any other provision in this Section 2.18.

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

2.19 **SUBDIVISION.** No Lot shall be divided or subdivided and no portion of any Lot (other than

the entire Lot) shall be transferred or conveyed for any purpose; provided, however, this shall not prohibit transfers of parts of Lots between adjoining Lot owners where the transfer is not for the purpose of creating a new building Lot. The provisions of this subsection shall not apply to the Declarant and, further, the provisions hereof shall not be construed to prohibit the granting of any easement or right-of-way to any person for any purpose.

2.20 **SIGNAGE.** Except for entrance signs, directional signs, signs for traffic control or safety, community "theme areas" or "For Sale" signs (not larger than 2 feet by 3 feet (2' x 3')), and except as provided in Section 2.8 of this Article II, no signs or advertising devices of any character shall be erected, posted or displayed upon, in or about any Lot or Structure. The provisions and limitations of this subsection shall not apply to any institutional first Mortgagee of any Lot who comes into possession of the Lot by reason of any proceeding, arrangement, assignment or deed in lieu of foreclosure.

2.21 **LEASE AGREEMENTS.** All lease agreements with respect to any Lot or any Structure located thereon shall be in writing. The minimum term of all lease agreements shall be one (1) year, and shall state that the lease agreement shall be subject to this Declaration. Owners who do not reside on their Lot must provide current addresses and phone numbers to the Association.

2.22 **TRASH AND OTHER MATERIALS.** No lumber, metals, bulk materials, refuse or trash shall be kept, stored or allowed to accumulate on any Lot, except (a) building material during the course of construction of any approved dwelling or other permitted Structure, and (b) firewood, which shall be cut and neatly stored at least six inches (6") off the ground and twelve inches (12") away from any wooden structure. No burning of trash shall be permitted on any Lot. All Owners shall place trash or other refuse into refuse containers provided by the Association or the City. Owners may not place any trash outside of such refuse containers or in any other location or container, except as designated by the Association, if any. The cost of refuse pick-up shall be borne by the Owner.

2.23 **NON-INTERFERENCE WITH UTILITIES.** No Structure, planting or other material shall be placed or permitted to remain upon any Lot which may damage or interfere with any easement for the installation or maintenance of utilities, or which may unreasonably change, obstruct or retard direction or flow of any drainage channels. No poles and wires for the transmission of electricity, telephone and the like shall be placed or maintained above the surface of the ground on any Lot.

2.24 **PARTY WALLS.**

(a) Each wall that is built as a part of the original construction of the dwellings upon the Lots and placed upon the dividing line between such Lots shall constitute a party wall, and to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

(c) If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owner(s) thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owner(s) to call for a larger contribution from the other(s) under any rule of law regarding liability for negligence or willful acts or omissions.

(d) Notwithstanding any other provision of this Section, any Owner who by its negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(e) The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to each Owner's successors in title.



(f) In the event of any dispute arising concerning a party wall, or under the provisions of this Section, each party shall choose one (1) arbitrator, and such arbitrators shall jointly choose one (1) additional arbitrator, and the decision shall be by the majority of the three (3) arbitrators.

(g) The rules applicable to party walls shall also apply to any party fences.

### **ARTICLE III**

#### **PROPERTY SUBJECT TO THIS DECLARATION AND ADDITIONS THERETO**

3.1 **PROPERTY.** The real property which is, and shall be, transferred, held, sold, conveyed and occupied subject to this Declaration is located in the Community, and is described on Exhibit A attached hereto, all of which real property is referred to herein as the "Property".

#### 3.2 **ADDITIONS TO PROPERTY.**

(a) The Declarant, its successors and assigns, shall have the right for seven (7) years from the date hereof to bring within the scheme of this Declaration Additional Property within the Community (the "Additional Property") without the consent of the Class A members of the Association provided that the annexation is in accordance with the general plan heretofore approved. The general plan of development is shown on the Plat, but the plan shall not bind the Declarant, its successors or assigns, to make the proposed additions, or to adhere to the plan in any subsequent development of the land shown thereon. The Additional Property that may be annexed to the Community is described on Exhibit B attached hereto.

(b) The additions authorized under this subsection shall be made by filing a supplemental declaration of record with respect to the Additional Property which shall extend the scheme of the Declaration to such Additional Property, and which Additional Property shall thereupon become part of the Property. Upon the filing of any supplemental declaration, Owners of Additional Property shall be subject to the same obligations and entitled to the same privileges as apply to the Owners of the Property. Such supplemental declaration may contain such complementary additions and modifications to the Declaration as may be necessary to reflect the different character, if any, of the Additional Property not inconsistent with the scheme of this Declaration. In no event, however, shall such supplemental declaration revoke, modify or add to the Covenants established by this Declaration for the Property as of the date hereof.

### **ARTICLE IV**

#### **MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

4.1 **MEMBERSHIP.** Every Owner of a Lot that may become subject to assessment under the provisions of Article VIII of this Declaration shall become and be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot that is subject to assessment.

#### 4.2 **CLASSES OF MEMBERSHIP.**

(a) The Association shall have two (2) classes of voting membership:

(i) **Class A.** Except for the Declarant and any Builder, which shall initially be the Class B members, the Class A members shall be all Owners holding title to one (1) or more Lots; provided, however, that any Mortgagee or any other person or entity who holds such interest solely as security for performance of an obligation shall not be a Class A member solely on account of such interest. Each Class A member shall be entitled to one (1) vote per Lot, for each Lot owned by it, in all proceedings in which action shall be taken by members of the Association.

(ii) **Class B.** The Class B members shall be the Declarant and any Builder. The Class B members shall be entitled to three (3) votes per Lot for each Lot owned by them, in all proceedings in which actions shall be taken by members of the Association. Notwithstanding anything contained herein to the

contrary, each Builder shall be conclusively deemed during the Development Period:

(A) To have given the Declarant an irrevocable and exclusive proxy entitling the Declarant, at each meeting of the Membership held while such Builder holds such title, to cast the votes in the Association's affairs which such Builder holds under the foregoing provisions of this Section on each question which comes before such meeting;

(B) To have agreed with the Declarant that such proxy is given to and relied upon by the Declarant in connection with the Declarant's development, construction, marketing, sale and leasing of any or all of the Property and is coupled with an interest; and

(C) Such proxy shall cease with respect to the votes appurtenant to a Lot when a dwelling has been constructed on such Lot and legal title to such Lot is conveyed to a person who intends to occupy such dwelling as a residence.

(b) If more than one (1) person, firm, corporation, trustee, or other legal entity, or any combination thereof, holds the record title to any Lot, all of the same, as a unit, and not otherwise, shall be deemed a single member of the Association. The vote of any member comprised of two (2) or more persons, firms, corporation, trustees, or other legal entities, or any other combination thereof, shall be cast in the manner provided for in the Articles of Incorporation and/or By-Laws of the Association, or as the several constituents may determine, but in no event shall all such constituents cast more than one (1) vote per Lot for each Lot owned by them.

4.3 **CONVERSION.** The Class B membership in the Association shall cease and be converted to Class A membership in the Association subject to being revived upon Additional Property being annexed to the Property pursuant to this Declaration, upon the earlier to occur of (i) December 31, 2006; or (ii) at such time as the total number of votes entitled to be cast by Class A members of the Association equals or exceeds the total number of votes entitled to be cast by the Class B members of the Association. If after such conversion additional property is made subject to the Declaration, then the Class B membership shall be reinstated until December 31, 2008, or such earlier time as the total number of votes entitled to be cast by Class A members again equals or exceeds the total number of votes entitled to be cast by Class B members. The Declarant and any Builder shall thereafter remain a Class A member of the Association as to each and every Lot from time to time subject to the terms and provisions of this Declaration in which the Declarant or the Builder then holds the interest otherwise required for Class A membership.

**ARTICLE V**  
**DECLARANT'S RESERVED RIGHTS AND OBLIGATIONS**

5.1 **RESERVED RIGHTS OF DECLARANT.** Each Owner shall own its Lot subject to the following:

(a) The reservation to Declarant, its successors and assigns, of non-exclusive easements and rights-of-way over those strips or parcels of land designated or to be designated on the Plat as "Drainage and Utility Easement", "Sewer Easement", "Drainage and Sewage Easement", or otherwise designated as an easement area over any road on the Property, and over those strips of land running along the front, rear, side and other Lot lines of each Lot shown on the Plat, except for the common side lines on the Lots, for the purposes of proper surface water drainage, for ingress and egress, for the installation, construction, maintenance, reconstruction and repair of public and private utilities to serve the Property and the Lots therein, including but not limited to the mains, conduits, lines, meters and other facilities for water, storm sewer, sanitary sewer, gas, electric, telephone, cable television, and other public or private services or utilities deemed by Declarant necessary or advisable to provide service to any Lot, or in the area or on the area in which the same is located, for such purposes and making openings and excavations thereon, which openings and excavations shall be restored in a reasonable period of time, and for such alterations of the contour of the land as may be necessary or desirable to effect such purposes. Within the aforesaid easement areas, no Structure, planting or other material shall be placed or permitted to remain

which may damage or interfere with the installation and maintenance of utilities or change the direction of the flow of drainage channels or obstruct or retard the flow of water through drainage channels. The reserved easement areas of each Lot and all improvements therein, except improvements for which a public authority or utility company is responsible, shall be maintained continuously by the Owner of the Lot.

(b) The designation of streets, avenues, roads, courts and places upon the Plat is for the purpose of description only and not dedication, and the rights of the Declarant in and to the same are specifically reserved, and the Declarant hereby reserves unto itself, and its successors and assigns, the right to grade, regrade and improve the streets, avenues, roads, courts and places as the same may be located on the Plat, including the creation or extension of slopes, banks, or excavation in connection therewith and in the construction of and installation of drainage structures therein. The Declarant further reserves unto itself, and its successors and assigns, the bed, in fee, of all streets, avenues and public highways in the Community, as shown on the Plat.

(c) The Declarant further reserves unto itself, and its successors and assigns, the right to grant easements, rights-of-way and licenses to any person, individual, corporate body or municipality, to install and maintain pipelines, underground or above-ground lines, with the appurtenances necessary thereto for public utilities, or quasi-public utilities or to grant such other licenses or permits as the Declarant may deem necessary for the improvement of the Community in, over, through, upon and across any and all of the roads, streets, avenues, alleys, and in, over, through, upon, and across each and every Lot in any easement area set forth in this Declaration or as shown on the Plat.

(d) The Declarant further reserves unto itself and its successors and assigns, the right to dedicate all of said roads, streets, alleys, rights-of-way or easements, and stormwater management reservation, to public use all as shown on the Plat. No road, street, avenue, alley, right-of-way or easement shall be laid out or constructed through or across any Lot or Lots in the Community except as set forth in this Declaration, or as laid down and shown on the Plat, without the prior written approval of the Architectural Review Committee.

(e) Declarant further reserves unto itself and its successors and assigns, the right at or after the time of grading of any street or any part thereof for any purpose, to enter upon any abutting Lot and grade a portion of such Lot adjacent to such street, provided such grading does not materially interfere with the use or occupancy of any Structure built on such Lot, but Declarant shall not be under any obligation or duty to do such grading or to maintain any slope. Similarly, Declarant reserves the right unto itself, and its successors and assigns, and, without limitation, the Association, to enter on any Lot during normal business hours for the purpose of performing the maintenance obligations of the Association provided, however, that Declarant shall have no obligation to perform such maintenance. No right shall be conferred upon any Owner by the recording of any plat relating to the development of the Property in accordance with such plat, Declarant expressly reserving unto itself the right to make such amendments to any such plat or plats as shall be advisable in its best judgment and as shall be acceptable to public authorities having the right to approval thereof.

(f) Declarant further reserves unto itself, for itself and any Builder and their successors and assigns, the right, notwithstanding any other provision of the Declaration, to use any and all portions of the Property other than those Lots conveyed to Owners, for all purposes necessary or appropriate to the full and final completion of construction of the Community. Specifically, none of the provisions of Article II concerning architectural control or use restrictions shall in any way apply to any aspect of the Declarant's or Builder's activities or construction, and notwithstanding any provisions of this Declaration, none of the Declarant's or Builder's construction activities or any other activities associated with the development, marketing, construction, sales management or administration of the Community shall be deemed noxious, offensive or a nuisance. The Declarant reserves the right for itself and any Builder, and their successors and assigns, to store materials, construction debris and trash during the construction period on the Property without keeping same in containers. The Declarant will take reasonable steps, and will ensure that any Builder takes reasonable steps, to avoid unduly interfering with the beneficial use of the Lots by Owners.

5.2 **INCORPORATION BY REFERENCE; FURTHER ASSURANCES.** Any and all grants made to the Association with respect to any Lots shall be conclusively deemed to incorporate the foregoing

reservations, whether or not specifically set forth in such instruments. At the request in writing of any party hereto, any other party shall from time to time execute, acknowledge and deliver such further assurances of such reservations as may be necessary.

**ARTICLE VI**  
**COMMON AREA**

There is no commonly owned open space and therefore, the Association has no requirements for open space maintenance.

**ARTICLE VII**  
**ENCROACHMENTS**

If any Structure or any part thereof, now or at any time hereafter, encroaches upon an adjoining Lot, whether such encroachment is attributable to construction, settlement or shifting of the Structure or any other reason whatsoever beyond the control of the Board of Directors or any Owner, there shall forthwith arise, without the necessity of any further or additional act or instrument, a good and valid easement for the maintenance of such encroachment, for the benefit of the Owner, its heirs, personal representatives and assigns, to provide for the encroachment and non disturbance of the Structure. Such easement shall remain in full force and effect so long as the encroachment shall continue. The conveyance or other disposition of a Lot shall be deemed to include and convey, or be subject to, any easements arising under the provisions of this Article without specific or particular reference to such easement.

**ARTICLE VIII**  
**COVENANT FOR ASSESSMENT**

8.1 **COVENANT FOR ASSESSMENT.** The Declarant for each Lot owned by it within the Property, hereby covenants, and each Owner, by acceptance of a deed hereafter conveying any such Lot to it, whether or not so expressed in such deed or other conveyance, shall be deemed to have covenanted and agreed to pay the Association (a) in advance, an annual assessment (the "Annual Assessment") equal to the member's proportionate share of the sum required by the Association, as estimated by the Board of Directors, for Annual Assessments or charges, and (b) Special Assessments (as hereinafter defined) or charges, for capital improvements, such annual and special assessments and charges to be established and collected as hereinafter provided; provided, however, that such covenant and agreement to pay Annual Assessments and Special Assessments shall be subject to the provisions of Section 8.1 (a) below. The Annual and Special Assessments or charges shall be a charge and continuing lien upon each of the Lots against which the assessment is made in accordance with the terms and provisions of this Article VIII and shall be construed as a real covenant running with the land. Such assessments or charges, together with interest at a rate of twelve percent (12%) per annum, and costs and reasonable attorney fees incurred or expended by the Association in the collection thereof, shall also be the personal obligation of the Owner holding title to any Lot at the time when the assessment fell due or was payable. The personal obligation for any delinquent assessment or charge, together with interest, costs and reasonable attorney fees, however, shall not pass to the Owner's successor or successors in title unless expressly assumed by such successor or successors.

(a) The obligation to pay Annual Assessments and Special Assessments shall be subject to the following conditions:

(i) Until such time as the Class B membership converts to a Class A membership under the provisions of Section 4.3 of this Declaration, no Annual Assessments or Special Assessments shall be due and owing from Declarant or any Owner. Subsequent to the time Class A membership converts to Class B membership, the members, upon an affirmative vote of at least seventy-five percent (75%), voting in person or by proxy, at a meeting duly called for such purpose, may authorize and enforce payment of Annual Assessments and/or Special Assessments for the purposes and upon the terms set forth herein; provided, however, that such obligation for payment may be terminated thereafter upon a vote of seventy-five percent (75%) of the members, voting in person or by proxy, at a meeting duly called for such purpose.

8.2 **USE OF ASSESSMENTS.** The assessments and charges levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents of the Community, including, without limitation, the enforcement of any provision of this Declaration.

8.3 **SPECIAL ASSESSMENTS.** The Association may levy in any assessment year, a special assessment ("Special Assessment"), applicable for that year only, to meet any deficit of the Association or any emergency or unforeseen expenses of the Association; provided that such assessment shall first be approved by two-thirds (2/3) of the votes of each class of the members of the Association, voting in person or by proxy at a meeting duly called for such purpose.

8.4 **NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTION 8.3.** Written notice of any meetings of members of the Association called for the purpose of taking any action authorized under Section 8.3 of this Article shall be sent to all members not less than thirty (30) days, nor more than sixty (60) days, in advance of the meeting. At the first such meeting called, the presence at the meeting of members or of proxies, entitled to cast sixty percent (60%) of all of the votes of each class of members entitled to be cast at such a meeting shall be necessary and sufficient to constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at any subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

8.5 **COMMENCEMENT DATE OF ANNUAL ASSESSMENTS.**

(a) The due date of any Special Assessment under Section 8.3 shall be fixed in the resolution authorizing such Special Assessment.

8.6 **DUTIES OF THE BOARD OF DIRECTORS.**

(a) If Annual Assessments and/or Special Assessments are authorized under the terms of Section 8.1 (a) (i) hereof, the Board of Directors shall determine the amount of the assessments annually, but may do so at more frequent intervals should circumstances so require. Upon resolution of the Board of Directors, installments of Assessments may be levied and collected on a quarterly, semi-annual or annual basis. Any member may prepay one or more installments of any assessment levied by the Association, without premium or penalty.

(b) The Association shall, upon demand at any time, furnish to any Owner liable for assessment a certificate in writing signed by an officer of the Association setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated as having been paid. A charge not to exceed Ten Dollars (\$10.00) may be levied in advance by the Association for each certificate so delivered.

8.7 **ADDITIONAL ASSESSMENTS.** Additional assessments may be fixed against any Lot only as provided for in this Declaration. Any such assessments shall be due as provided by the Board of Directors in making any such assessment.

8.8 **NONPAYMENT OF ASSESSMENT.** Any assessment or portion thereof not paid within thirty (30) days after the due date thereof shall be delinquent and shall bear interest from the date of delinquency at the rate of twelve percent (12%) per annum, and shall be subject to a late charge of Ten Dollars (\$10.00) per month until paid, or ten percent (10%) of the assessment, whichever is greater, and the Board of Directors shall have the right to declare the entire balance of the assessment and accrued interest thereon to be immediately due and payable. The Association may bring an action at law against the Owner personally obligated to pay the same, and/or without waiving any other right, at equity to foreclose the lien against the Lot in the same manner and subject to the same requirements as are specified by the law of Utah for the foreclosure of mortgages or deeds of trust containing a power of sale or an assent to a decree, and there shall be added to the amount of such assessment the reasonable costs of preparing and filing the complaint of such action, and in the event that judgment is obtained, such judgment shall include interest on the assessment as above provided, late fees and reasonable

attorney fees to be fixed by the court together with the cost of the action. No Owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of such Owner's Lot.

8.9 **SUBORDINATION OF LIEN TO MORTGAGE.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage(s) or deed(s) of trust now or hereafter placed upon the Lot subject to assessment; provided, however, that the sale or transfer of any Lot pursuant to mortgage or deed of trust foreclosure, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. Such sale or transfer shall not relieve such Lot from liability for any assessments thereafter becoming due, nor from the lien of any such future assessment.

8.10 **ENFORCEMENT OF LIEN.** The Association may establish and enforce the lien for any assessment, annual, special, or otherwise, pursuant to the provisions of this Declaration. The lien is imposed upon the Lot against which such assessment is made. The lien may be established and enforced for damages, interest, costs of collection, late charges permitted by law, and attorney fees provided for herein or awarded by a court for breach of any of the covenants herein.

8.11 **EXEMPT PROPERTY.** All Lots owned by the Association or dedicated to and accepted by a public authority and all property owned by a charitable or non-profit organization exempt from taxation by the laws of the State of Utah shall be exempt from the assessments created herein.

**ARTICLE IX  
INSURANCE AND CASUALTY LOSSES**

9.1 **HAZARD INSURANCE ON IMPROVED LOTS.** Each Owner of an improved Lot at all times shall maintain fire and extended coverage insurance or other appropriate damage and physical loss insurance, in an amount equal to not less than one hundred percent (100%) of the current replacement value of the improvements on the Lot.

9.2 **OBLIGATION OF LOT OWNER TO REPAIR AND RESTORE.**

(a) In the event of any damage or destruction of the improvements on a Lot, the insurance proceeds from any insurance policy on an improved Lot, unless retained by a Mortgagee of a Lot, shall be applied first to the repair, restoration or replacement of the damaged or destroyed improvements. Any such repair, restoration or replacement shall be done in accordance with the plans and specifications for such improvements originally approved by the Declarant or the Architectural Review Committee; unless the Owner desires to construct improvements differing from those so approved, in which event the Owner shall submit plans and specifications for the improvements to the Architectural Review Committee and obtain its approval prior to commencing the repair, restoration or replacement.

(b) If any Owner of an improved Lot fails to maintain the insurance required by Section 9.5 of this Article, the Association may, but shall not be obligated to, obtain such insurance and pay any premiums required in connection with obtaining such insurance. Such Owner shall be personally liable to the Association for any costs incurred by the Association in obtaining such insurance, to the same extent as such Owner is liable for assessments levied against its Lot, and, upon the failure of the Owner to pay such costs within ten (10) days after such Owner's receipt of a written demand therefor from the Association, the Association may establish a lien therefor upon the Owner's Lot in accordance with and subject to the provisions of this Declaration applicable to an assessment lien.

**ARTICLE X  
RIGHTS OF MORTGAGEES**

10.1 **GENERAL.**

(a) Regardless of whether a Mortgagee in possession of a Lot is its Owner, (i) such

Mortgagee in possession shall have all of the rights under the provisions of this Declaration, the Plat, the Articles of Incorporation, the By-Laws and applicable law, which would otherwise be held by such Owner, subject to the operation and effect of anything to the contrary contained in its Mortgage, and (ii) the Association and each other Owner or person shall be entitled, in any matter arising under the provisions of this Declaration and involving the exercise of such rights, to deal with such Mortgagee in possession as if it were the Owner thereof.

(b) Any Mortgagee in possession of a Lot shall (subject to the operation and effect of the provisions of this Declaration, the Articles of Incorporation, the By-Laws and applicable law) bear all of the obligations under the provisions thereof which are borne by its Owner; provided, that nothing in the foregoing provisions of this Section shall be deemed in any way to relieve any Owner of any such obligation, or of any liability to such Mortgagee on account of any failure by such Owner to satisfy any of the same.

10.2 **INSPECTION; STATEMENT AND NOTICE.** A Mortgagee shall, upon delivery of a written request to the Association, be entitled to

- (a) inspect the Association's books and records during normal business hours;
- (b) receive an annual financial statement of the Association within ninety (90) days after the end of any fiscal year of the Association;
- (c) be given timely written notice of all meetings of the Membership, and designate a representative to attend all such meetings;
- (d) be given timely written notice by the Association of failure to pay assessments by the Owner of such Mortgagee's Lot which is not cured within thirty (30) days after such default commences, but the failure to give such notice shall not affect the validity of the lien for any assessments levied pursuant to this Declaration.

10.3 **APPROVAL BY FEDERAL HOUSING ADMINISTRATION AND VETERANS ADMINISTRATION.** Until the Class B membership terminates pursuant to the provisions of Article IV, Section 4.3, the consent or approval of the Federal Housing Administration, the Veterans Administration and/or the Department of Housing and Urban Development shall be obtained with respect to any of the following actions taken while a Mortgage is in effect which is insured by such entity:

- (a) an amendment of this Declaration; and
- (b) annexation of additional properties.

## **ARTICLE XI** **MISCELLANEOUS**

11.1 **TERM.** This Declaration shall run with the land and shall be binding for a period of thirty (30) years from the date this Declaration is recorded, after which time this Declaration shall automatically be extended for successive periods of ten (10) years each unless and until an instrument has been recorded, by which this Declaration, in whole or in part, is amended, modified or revoked pursuant to the provisions of Section 11.8.

### 11.2 **ENFORCEMENT**

(a) Enforcement of this Declaration shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant, either to restrain the violation or to recover damages, or both. In acquiring title to any Lot in the Community, the purchaser or purchasers violating or attempting to violate any covenant, agree to reimburse the Association and/or any Owners for all costs and expenses for which it or they may be put as a result of the said violation or attempted violation, including but not limited to, court costs and attorney fees.

(b) These Covenants shall inure to the benefit of and be enforceable by the Association or by the Owner(s) of any land included in the Community and their respective legal representatives, successors and assigns, and all persons claiming by, through or under them.

(c) Notwithstanding the foregoing, neither the Association or any person acting or purporting to act on its behalf shall (a) file or otherwise commence, or prosecute, in any jurisdiction whatsoever, any (i) civil, criminal or administrative proceeding in or with any court or administrative body or officer, or (ii) appeal of or objection to any decision or other action made or taken by any court or administrative body or officer, in any judicial or administrative proceeding; or (b) testify or submit evidence (except where required by law, subpoena or formal order of such court, administrative body or officer); or otherwise take a formal position on any issue under consideration, in any such proceeding or appeal, in all cases until such action is approved in writing by, or by the vote of, both (x) members entitled to cast at least seventy-five percent (75%) of the votes held by all Owners other than Class B Members, and (y) (if such action would be taken during the Development Period), the votes of Class B Owners holding at least seventy-five percent (75%) of the votes held by all Class B Owners. Nothing in this subsection shall apply to a civil or administrative proceeding which the Association commences or prosecutes with a court or administrative body or officer (a) to collect an Assessment, or enforce or foreclose a lien securing an Assessment, or (b) otherwise to enforce the Association's rights or another person's obligations under the Declaration, By-Laws or Articles of Incorporation on account of a default or otherwise.

11.3 **NO WAIVER.** The failure or forbearance by the Association to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

11.4 **INCORPORATION BY REFERENCE ON RESALE.** In the event any Owner sells or otherwise transfers any Lot, any deed purporting to effect such transfer shall be deemed to contain a provision incorporating by reference the covenants, restrictions, servitudes, easements, charges, and liens set forth in this Declaration, whether or not the deed actually so states.

11.5 **NOTICES.** Any notice required to be sent to any member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, by ordinary mail, postage paid, to the last known address of the person who appears as member or Owner on the records of the Association at the time of such mailing.

11.6 **SEVERABILITY.** Invalidation of any one of these covenants or restrictions by judgment, decree or order shall in no way affect any other provisions hereof, each of which shall remain in full force and effect.

11.7 **CAPTIONS AND GENDERS.** The captions contained in this Declaration are for convenience only and are not a part of this Declaration and are not intended in any way to limit or enlarge the terms and provisions of this Declaration. Whenever the context so requires, the male shall include all genders and the singular shall include the plural.

11.8 **AMENDMENT.**

(a) For so long as there is a Class B membership of the Association, this Declaration may be amended by an instrument in writing, signed and acknowledged by the Declarant and by the President or Vice-President and Secretary or Assistant Secretary of the Association after approval of the amendment at a meeting of the Association duly called for such purpose. The vote (in person or by proxy) or written consent of (i) at least two-thirds (2/3) of the Class A members of the Association, if any, and (ii) the Declarant shall be required to add to, amend, revise or modify this Declaration. Following the lapse of the Class B membership in the Association, as provided in Article IV hereof, this Declaration may be amended by an instrument in writing, signed and acknowledged by the President or Vice-President and Secretary or Assistant Secretary of the Association with the approval, in the manner set forth above, of at least two-thirds (2/3) of the Class A members of the Association at a meeting of the Association duly called for such purpose.



(b) An amendment or modification shall be effective when executed by the President or Vice-President and Secretary or Assistant Secretary of the Association who shall certify that the amendment or modification has been approved as herein above provided. The amendment shall be recorded in the Recorder's Office of Utah County. Unless a later date is specified in any such instrument, any amendment to this Declaration shall become effective on the date of recording. For the purpose of recording such instrument, each Owner, other than the Declarant, hereby grants to the president or Vice-President and Secretary or Assistant Secretary of the Association an irrevocable power of attorney to act for and on behalf of each and every Owner in certifying, executing and recording said instrument. Notwithstanding anything to the contrary contained herein, in no event may any of Declarant's rights or privileges under the Articles of Incorporation or By-Laws of the Association or this Declaration be terminated, altered or amended without Declarant's prior written consent.

(c) Anything set forth above to the contrary notwithstanding, during the Development Period the Declarant shall have the absolute unilateral right, power and authority to amend, modify, revise, or change any of the terms or provisions of this Declaration, By-Laws, Articles of Incorporation, Plat or any other document relating to the Community, all as from time to time amended or supplemented, without the consent of any Owner, Mortgagee or other person, which in its reasonable opinion, is needed to (i) correct obvious typographical, mathematical or similar errors therein, or (ii) cause any of the foregoing documents to conform to any requirement now or hereafter imposed by the Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation, Department of Housing and Urban Development, Department of Veterans Affairs or any other similar authority, in connection with any mortgage insurance or guaranty, secondary mortgage market, or other program applicable to the issuance or sale of Mortgages.

(d) Declarant may at any time during the Development Period, acting in its sole discretion and without the consent or joinder by the Association, Owner, Mortgagee or other person, (i) amend or supplement the Plat if and to the extent that the Declarant, in its sole discretion, deems necessary or desirable in connection with development of the Community (including, but not limited to, altering the locations, boundaries or property-type designation of any Lots, easement areas and setback or building restriction lines set forth thereon), or (ii) amend or supplement this Declaration to reflect any such alteration previously made by an amendment, revision or supplement of the Plat under the preceding clause, or release from the legal effect of this Declaration all or part of the real property then subject thereto. Any such amendment, revision or supplement of the Plat shall become effective for purposes of this Declaration on being signed by Declarant and any other person whose approval thereof is required by law as a condition thereto, and recorded.

(e) An amendment may not modify a right expressly reserved in this Declaration for Declarant's benefit, without the Declarant's prior written consent.

(f) Nothing in this Section shall be construed in derogation of any requirement in this Declaration that all or a specified number of Mortgagees approve specified actions of the Association.

WITNESS the hand and seal of the Declarant hereto on the day herein above first written.

WITNESS/ATTEST:

DECLARANT:

KelvinGrove L.L.C.  
By: Hamlet Homes Corporation  
Its: Managing Member

Julie Veltz

By: John Aldous  
John Aldous, President

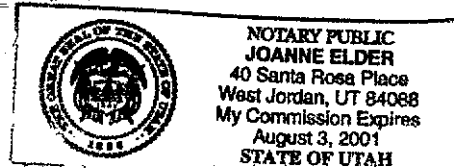
STATE OF UTAH, CITY/COUNTY OF SALT LAKE, TO WIT:

I HEREBY CERTIFY that on this 20 day of March 2000, before me, the subscriber, a Notary Public of the State of Utah, personally appeared John Aldous, known to me or suitably proven, who acknowledged himself to be the President of Hamlet Homes Corporation, Managing Member of KelvinGrove L.L.C., the Declarant named in the foregoing Declaration of Covenants, Conditions and Restrictions, and who, being authorized to do so, in my presence, signed and sealed the same and acknowledged the same to be the act and deed of the Declarant.

AS WITNESS my hand and seal.

Joanne Elder  
Notary Public

My commission expires on 8-3-01



**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**EXHIBIT A**

**Description of the Property**

BEING all those 80 Lots shown and designated as Lot Nos. 1 through and including 80 shown on the Plat entitled, "KELVINGROVE SUBDIVISION" recorded among the Recorder's Office of Utah County in Plat Book \_\_\_\_\_ No. \_\_\_\_\_, Folio \_\_\_\_\_

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**EXHIBIT B**

**Description of the Additional Property**

BEING all that land shown as "FUTURE DEVELOPMENT PHASE II" shown on the Concept Plan, KELVINGROVE, a copy of which is attached hereto.

**CONSENT AND AGREEMENT OF TRUSTEE AND BENEFICIARY**

FIRST AMERICAN TITLE INSURANCE COMPANY and FIRST SECURITY BANK, N.A., are, respectively, the Trustee and the Beneficiary under that certain Deed of Trust dated \_\_\_\_\_ and recorded as Entry No. \_\_\_\_\_ in Book \_\_\_\_\_ at Pages \_\_\_\_\_ of the Official Records of Utah County, Utah hereby join in the foregoing Declaration of Covenants, Conditions and Restrictions for the express purpose of subordinating all of their respective right, title and interest under such Deed of Trust in and to the real property described in Exhibit A such to the operation and effect of such Declaration.

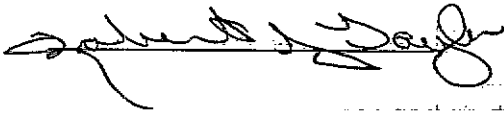
Nothing in the foregoing provisions of this Consent and Agreement of Trustee and Beneficiary shall be deemed in any way to create between the person named in such Declaration as "the Declarant" and any of the undersigned any relationship of partnership or joint venture, or to impose upon any of the undersigned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

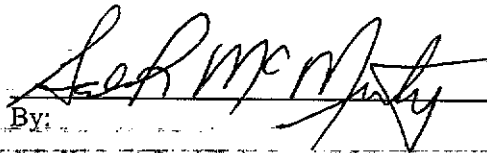
IN WITNESS WHEREOF, the Trustee and Beneficiary have executed and sealed this Consent and Agreement of Trustee and Beneficiary or caused it to be executed and sealed on its behalf by its duly authorized representatives, this 21<sup>st</sup> day of March 2000.

WITNESS/ATTEST:

TRUSTEE:

FIRST AMERICAN TITLE INSURANCE COMPANY

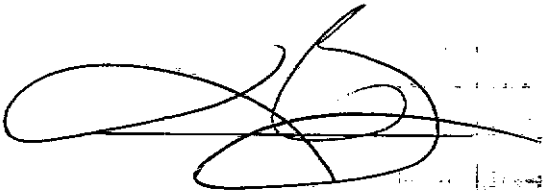


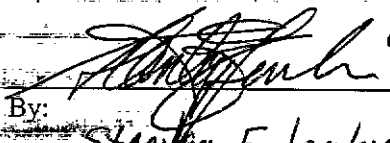
 (SEAL)  
By:

WITNESS/ATTEST:

BENEFICIARY:

FIRST SECURITY BANK, N.A.



 (SEAL)  
By: Stanley F Jenkins, V.P.

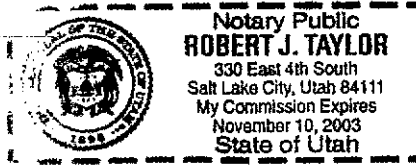
STATE OF UTAH: COUNTY OF Salt Lake TO WIT:

I HEREBY CERTIFY that on this 21<sup>st</sup> day of March 2000 before me, a Notary Public for the state aforesaid, personally appeared Galen R. McMurtry, on behalf of FIRST AMERICAN TITLE INSURANCE COMPANY, Trustee, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument, who acknowledged that he has executed it on behalf of the Trustee for the purposes therein set forth, and that it is his act and deed.

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

[Signature]  
Notary Public

My commission expires on 11/10/00.



STATE OF UTAH, COUNTY OF SLC : TO WIT:

I HEREBY CERTIFY that on this 20<sup>th</sup> day of March 2000 before me, a Notary Public for the state aforesaid, personally appeared Stanley F. Jenkins, the VICE President of FIRST SECURITY BANK, N.A., Beneficiary, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument, who acknowledged that he/she has executed it as Beneficiary for the purposes therein set forth, and that it is his/her act and deed.

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

[Signature]  
Notary Public

My commission expires on 12-15-01.

