

3423201

DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS OF
WESTBROOK PARK
PLANNED UNIT DEVELOPMENT

THIS DECLARATION is made and executed this 12th
day of May, 1980, by KLUNGERVIK & COMPANY, a
Utah corporation, (hereinafter referred to as "Declarant").

RECITALS:

A. Declarant is the record owner of that certain parcel of real property (the Land) more particularly described in Article II of this Declaration. Declarant desires to create on the Land a residential development with certain Common Areas.

B. Declarant desires to provide for preservation of the values and amenities of the Property and for maintenance of the Common Areas. To this end and for the benefit of the Property and of the Owners thereof, Declarant desires to subject the Land described in Article II of this Declaration to the covenants, restrictions, easements, charges, and liens hereinafter set forth.

C. Declarant deems it desirable, for the efficient preservation of the values and amenities of the Property, to create an entity which possesses the power to maintain and administer the Common Areas, to collect and disburse the assessments and charges hereinafter provided for, and otherwise to administer and enforce the provisions of this Declaration. For such purpose Declarant has, in conjunction with recordation of this Declaration, caused or will cause to be incorporated under the laws of the State of Utah as a nonprofit corporation, THE WESTBROOK PARK PROPERTY OWNERS ASSOCIATION.

D. It is anticipated that Declarant will offer additional subdivisions whose Owners will become members of the Westbrook Park Property Owners Association and will be entitled and subject to all rights, powers, privileges, covenants, restrictions, easements, charges, and liens hereinafter set forth.

NOW, THEREFORE, for the foregoing purposes, Declarant declares that the Land described in Article II of this Declaration is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, easements, charges, and liens hereinafter set forth.

I. DEFINITIONS

When used in this Declaration (including in that portion hereof under "RECITALS") the following terms shall have the meaning indicated.

BOOK 5099 PAGE 1471

1. Declaration shall mean and refer to this Declaration of Covenants, Conditions and Restrictions as the same may from time to time be amended. The Declaration is initially applicable to 74 Lots numbered 1 to 74, inclusive, and to Area A and Area B.

2. Plat shall mean and refer to the subdivision plats of Westbrook Park Planned Unit Development, a Planned Residential Development filed for record in the office of the County Recorder of Salt Lake County, Utah, on March 7, 1979 in Book 79-3 at Page 70 as Entry No. 3246726, and to any other subdivision plats: (a) which describes or creates one or more Lots; (b) on which or in an instrument recorded in conjunction therewith in which there is expressed the intent that the subdivision created by Plat shall comprise a part of the Development; and (c) which is filed for record in the office of the County Recorder of Salt Lake County, Utah, within ten (10) years after the date on which the Declaration was recorded.

3. Property shall mean and refer to all of the land covered by the Plat and this Declaration, a description of which is stated in Article II of this Declaration, together with such other lands as may from time to time be annexed thereto under the provisions of Article III hereof.

4. Lot shall mean and refer to any of the separately numbered and individually described parcels of land shown on the Plat with the exception of the Common Areas.

5. Common Areas shall mean and refer to that portion of the Property which is not included within the Lots, including all improvements other than utility lines now or hereafter constructed or located thereon.

6. Exclusive Parking Area shall mean and refer to any of the separately numbered areas of land within the Common Areas for use of parking automobiles. Each such space is a Limited Common Area. On the Map each such parking space is labelled with a number which corresponds with the Lot Number of a Lot contained within the Development. The exclusive use of such space is reserved to the Lot which has the corresponding Lot Number.

7. Living Unit shall mean and refer to a structure which is designed and intended for use and occupancy as a single-family residence, together with all improvements located on the Lot concerned which are now used in conjunction with such residence.

8. Owner shall mean and refer to the person who is the owner of record (in the office of the County Recorder of Salt Lake County, Utah) of a fee or an undivided fee interest in the Lot. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term Owner shall not mean or include a mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

9. Association shall mean and refer to Westbrook Park Property Owners Association, a Utah nonprofit corporation.

10. Board of Trustees or the Board shall mean and refer to the Board of Trustees of the Westbrook Park Property Owners Association.

11. Member shall mean and refer to every person who holds membership in the Association.

12. Mortgagee shall mean any person named as a mortgagee or beneficiary under or holder of a deed of trust.

13. Undeveloped Land shall, at any point in time, mean all of the land more particularly described in Exhibit "A" attached hereto and made a part hereof, excluding any portion or portions of such land comprising the Property and any other portion or portions of such land improved with the completed above-ground Living Units and related on-site and off-site improvements ordinarily in existence when a tract of land is considered to be fully developed. So long as it is not arbitrary, Declarant's determination as to when any of the land described in Exhibit "A" ceases to be Undeveloped Land shall be conclusive.

14. Recreational Vehicle Parking Area shall mean and refer to the area provided in the Development for parking of all recreational vehicles, including, but not limited to, boats, campers, trailers, motor homes, trucks larger than pickup trucks and the like.

15. Development shall mean and refer to the Westbrook Park Planned Unit Development.

16. Supplementary Declaration shall mean and refer to any declaration of covenants, conditions and restrictions, or similar instrument, which extends the provisions of the Declaration to additional property within the Undeveloped Land and contain such complementary provisions for such additional property as are herein required by the Declaration.

II. DESCRIPTION OF PROPERTY

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 situated in Salt Lake County, State of Utah, to-wit:

Beginning at a point which is 662.36 ft. North, 89°56'59" East from the N¼ Corner of Section 29, T. 1 South, R. 1 West, Salt Lake Base & Meridian; thence North 89°56'59" East 324.41 ft.; thence South 245.33 ft., thence South 7°30' West 155.00 ft., thence South 215.00 ft.; thence East 216.07 ft.; thence South 0°07'30" East 132.85 ft.; thence South 89°52'30" West 233.61 ft.; thence South 0°07'30" East 250.70 ft.; thence South 28°06'15" West 87.12 ft.; thence South 89°52'30" West 244.09 ft.; thence North 0°07'30" West 1075.16 ft. to the point of beginning, containing 8.12 acres.

EXCLUDING all presently existing or to be constructed or installed sewer lines,

water mains, gas lines, electrical conduits, telephone lines, and related facilities to the extent they are located outside the Lots included within the above-described tract.

RESERVING UNTO DECLARANT, however, such easements and rights of ingress and egress over, across, through, and under the above-described tract and any improvements 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): (a) To construct Living Units on each and every Lot and to improve the Common Areas with such facilities designed for the use and enjoyment of all the Members as Declarant may reasonably determine to be appropriate; (b) To develop and improve, as Declarant may in its sole discretion determine to be appropriate, the Property; (c) To develop, improve, and construct on Lots 1 through 10, 37 through 46, and Area A and Area B, at Declarant's option, structures other than Living Units including, but not limited to, parking facilities, landscape areas and other amenities as the Zoning Ordinances of Salt Lake County or other governmental entity having jurisdiction will permit. In the event Declarant elects to construct structures other than Living Units on said Lots, or any of them, membership in the Association provided in Article III hereof shall not be applicable to such Lot or Lots. If, pursuant to the foregoing reservations, the above-described land or any improvement thereon is traversed or partially occupied by a permanent improvement or utility line, a perpetual easement for such improvement or utility line shall exist. With the exception of such perpetual easements, the reservations hereby effected shall, unless sooner terminated in accordance with their terms, expire ten years after the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake 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 land or any portion thereof, including, without limitation, any mortgage or deed of trust; all visible easements and rights-of-way of record.

III. ANNEXATION OF ADDITIONAL PROPERTY

1. Annexation by Declarant. Declarant may from time to time and in its sole discretion expand the Property subject to this Declaration by the annexation of all or part of the lands initially constituting the Undeveloped Land. The annexation of any such land shall become effective upon the recordation in the office of the County Recorder of Salt Lake County, Utah of a subdivision plat or map covering the land to be annexed and a supplemental declaration which (i) describes the land to be annexed or incorporated by reference the description contained in the subdivision plat, (ii) declares that the annexed land is to be held, sold, conveyed, encumbered, leased, occupied and improved as part of the Property subject to the Declaration, (iii) sets forth such additional limitations, restrictions, covenants and conditions as are applicable to the annexed land, (iv) states which portion of the annexed land are Common Areas and which portions are Lots, and (v) describes generally any improvements situated on the annexed land. When such annexation becomes effective, the annexed land shall become part of the Property.

2. Limitation on Annexation. Declarant's right to annex land to the Property shall be subject to the following limitations:

(a) The annexed land must be part of the land which is Undeveloped Land as of the date of this Declaration.

(b) Declarant shall not effectuate any annexation of land which would cause the total number of living units existing on, or planned for, the Property to exceed 520 Lots.

(c) Declarant's right to annex land to the Property shall expire ten years after this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah.

3. Supplementary Declaration. The additions authorized under the foregoing section shall be made by filing of record a Supplementary Declaration of Covenants, Conditions and Restrictions or similar instrument, with respect to the additional property which shall extend the plan of this Declaration to such property.

Such Supplementary Declarations contemplated above may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added property and as are not inconsistent with the plan of this Declaration.

The recordation of said Supplementary Declaration shall constitute and effectuate the annexation of the said real property described therein, making said real property subject to this Declaration and subject to the functions, powers and jurisdiction of the Association, and thereafter all of the owners of Lots in said real property shall automatically be members of the Association.

4. Declarant's Right to Amend. Until all portions of Undeveloped Land are included in the Development, or until the right to enlarge the Development through the addition of tracts or subdivisions terminates, whichever event first occurs, Declarant shall have, and is hereby vested with, the right to unilaterally amend the Declaration as may be reasonably necessary or desirable: (i) to more accurately express the intent of any provisions of the Declaration in the light of then existing circumstances or information; (ii) to better insure, in light of then existing circumstances or information, workability of the arrangement which is contemplated by the Declaration; or (iii) to facilitate the practical, technical, administrative or functional integration of any additional tract or subdivision into the Development.

5. Expansion of Definitions. In the event the Property is expanded the definitions used in this Declaration automatically shall be expanded to encompass and refer to the Property as so expanded. E.g., "Property" shall mean the real property described in Article I of this Declaration plus any additional real property added by a Supplemental and/or Amended Declaration or by Supplemental and/or Amended Declarations, and reference to this Declaration shall mean this Declaration as so supplemented or amended

6. No Obligation to Annex or Develop. Declarant has no obligation hereunder to annex any additional land to the Property or to develop or preserve any portion of the Undeveloped Land in any particular way or according to any particular time schedule. No land other than the Property as defined on the date hereof and land annexed thereto in accordance with the terms of this Article shall be deemed to be subject to this Declaration, whether or not shown on any subdivision plat or map filed by Declarant or described or referred to in any documents executed or recorded by Declarant. If Declarant elects to expand the Property, Declarant assures that its future improvements will be of comparable style, quality, size and, subject to inflationary situation, cost.

IV. MEMBERSHIP AND VOTING RIGHTS

1. Membership. Every Owner shall be a Member of the Association. Membership in the Association shall be mandatory, shall be appurtenant to the Lot in which the Owner has the necessary interest, and shall not be separated from the Lot to which it appertains.

2. Voting Rights. The Association shall have the following described two classes of voting membership:

BOOK 5189 PAGE 1476

Class A. Class A Members shall be all the Owners other than the Declarant. Class A Members shall be entitled to one vote for each Lot in which the interest required for membership in the Association is held. In no event, however, shall more than one Class A vote exist with respect to any Lot.

Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to four (4) votes for each Lot in which it holds the interest required for membership in the Association. The Class B membership shall automatically cease and be converted to Class A membership on the first to occur of the following events:

(a) When the total number of votes held by all Class A members equals the total number of votes held by the Class B Member provided, however, that Class B membership shall be restored upon the annexation of additional Lots to the Property pursuant to Article III above if and so long as the number of Class B votes after such annexation exceeds the number of Class A votes, or,

(b) The expiration of ten (10) years after the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah.

3. Multiple Ownership Interests. In the event there is more than one Owner of a particular Lot, the vote relating to such Lot shall be exercised as such Owners may determine among themselves. A vote cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the Lot concerned unless an objection is immediately made by another Owner of the same Lot. In the event such objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

V. PROPERTY RIGHTS IN COMMON AREAS

1. Easement of Enjoyment. Each Member shall have a right and easement of use and enjoyment in and to the Common Areas. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom. Any Member may delegate the right and easement of use and enjoyment described herein to any tenant, lessee, or contract purchaser who resides on such Member's Lot.

2. Exclusive Easement Concerning Parking Areas. Each member shall have an exclusive right and easement of use and enjoyment in and to that Exclusive Parking Area defined on the Plat by shading and numbering and in this Declaration. Such exclusive right and easement shall be appurtenant to and shall pass with title to the Lot with which it is associated and in no event shall be separated therefrom. Each Exclusive Parking Area, identified on the

BOOK 5099 PAGE 1477

Plat with the same number by which the Lot is identified thereon, shall be used only in connection with such Lot to the exclusion of the use thereof by the other Owners except by invitation. Any member may delegate the right and easement of use and enjoyment described herein to any family member, household guest, tenant, lessee, contract purchaser, or other person who resides on such Member's Lot.

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

Lot No. _____ contained within the Westbrook Park Planned Unit Development, as the same is identified in the Plat recorded in Book _____ at Page _____ and in the "Declaration of Covenants, Conditions, and Restrictions of the Westbrook Park Planned Unit Development" recorded in Book _____ at Page _____, of the official records of Salt Lake County, Utah. 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 Covenants, Conditions, and Restrictions.

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 Lot.

4. Transfer of Title. Declarant agrees that it shall, on or before eighteen months from the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah, convey to the Association title to the Common Areas free and clear of all liens (other than the lien of current general taxes and the lien of any assessments, charges, or taxes imposed by governmental or quasi-governmental authorities).

5. Limitation on Easement. A Member's right and easement of use and enjoyment concerning the Common Areas shall be subject to the following:

(a) The right of the Association to suspend a Member's right to the use of any amenities included in the Common Areas for any period during which an assessment on such Member's Lot remains unpaid and for a period not exceeding ninety (90) days for any infraction by such Member of the provisions of this Declaration or any rule or regulation promulgated by the Association;

(b) The right of the Association to impose reasonable limitations on the number of guests

per Member who at any given time are permitted to use the Common Areas;

(c) The right of the Association to charge reasonable fees for the use of the Recreational Vehicle Parking Areas, provided, however, that under no circumstances shall any fee be charged Owners for use of the Exclusive Parking Area.

(d) The right of the County of Salt Lake and any other governmental or quasi-governmental body having jurisdiction over the property to access and rights of ingress and egress over and across the Common Areas contained within the Property for purposes of providing police and fire protection, transporting school children, and providing any other governmental or municipal service; and

(e) The right of the Association to dedicate or transfer all or 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. Any such dedication or transfer must, however, be assented to by two-thirds (2/3) of the vote of each class of membership which Members present in person or by proxy are entitled to cast at a meeting duly called for the purpose. Written or printed notice setting forth the purpose of the meeting and the action proposed shall be sent to all Members at least ten (10) days but not more than thirty (30) days prior to the meeting date.

6. Encroachments. If any portion of a Living Unit constructed by Declarant, or if any portion of a Living Unit reconstructed so as to substantially duplicate the Living Unit originally constructed by Declarant, encroaches upon the Common Areas, or other Lots, as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion of the development, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists.

VI. ASSESSMENTS

1. Personal Obligation and Lien. Each Owner shall, by acquiring or in any way becoming vested with his interest in a Lot, be deemed to covenant and agree to pay to the Association the monthly and the special assessments described in this Article, together with the hereinafter provided for interest, late payment service fee, and all costs of collection. All such amounts shall be,

constitute, and remain: (a) a charge and continuing lien upon the Lot with respect to which such assessment is made; and (b) the personal obligation of the person who is the owner of such Lot at the time the assessment falls due. No Owner may exempt himself or his Lot from liability for payment of assessments by waiver of his rights concerning the Common Areas or by abandonment of his Lot. Any such lien, however, shall be subordinate to the lien or equivalent security interest of any first Mortgage on the Lot recorded prior to the date any such common expense assessments become due.

2. Purpose of Assessments. Assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of residents of the Property. The use made by the Association of funds obtained from assessments may include payment of the cost of: taxes and insurance on the Common Areas; maintenance, repair, replacement, and improvement of those elements of the Common Areas that must be replaced on a periodic basis; management and supervision of the Common Areas; establishing and funding 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 this Declaration or its Articles of Incorporation.

3. Maximum Monthly Assessment. As of the date set under Section 7 of this Article each Lot shall be subject to a monthly assessment of not more than \$25.00. From and after December 31, 1979 the maximum monthly assessment may be increased or decreased so long as the change is assented to by more than fifty percent (50%) of all votes which Members 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 the meeting shall be sent to all Members at least ten (10) days but not more than thirty (30) days prior to the meeting date. The Board of Trustees of the Association may from time to time and in its discretion set the amount of the monthly assessment at any sum not in excess of the then applicable maximum amount.

4. Special Assessments. From and after the date set under Section 7 of this Article, 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 monthly assessments; or (b) the cost of any construction, reconstruction, or unexpectedly required repair or replacement in connection with the Common Areas. Any such special assessment must be assented to by more than fifty percent (50%) of all votes which Members present in person or represented

by proxy are entitled to cast at a meeting duly called for the purpose. Written notice setting forth the purpose of the meeting shall be sent to all Members at least ten (10) days but not more than thirty (30) days prior to the meeting date.

5. Quorum Requirements. The quorum required for any action authorized by Section 3 or 4 above shall be as follows: at the first meeting called the presence of Members or of proxies entitled to cast fifty-one percent (51%) of all outstanding votes 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 Sections 3 and 4) at which a quorum shall be one-half 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.

6. Uniform Rate of Assessment. Both monthly and special assessments shall be fixed at a uniform (equal) rate for all Lots.

7. Monthly Assessment Due Dates. The monthly assessments provided for herein shall commence as to all Lots sold on the date deed is delivered to first purchaser of a Lot (or contract of sale) or the date of occupancy under an occupancy agreement, whichever first occurs. The first monthly assessment shall be adjusted according to the number of days remaining in the month of conveyance, contract or occupancy, as the case may be. At least 15 days prior to the effective date of any change in amount of the monthly assessment the Association shall give each Owner written notice of the amount and the first due date of the assessment concerned. Declarant's duty to pay full assessments (both monthly and special) on all unsold Lots shall commence upon occupancy, completion, or sixty (60) days following close of sale of the first Lot in the applicable phase of the Development, whichever event first occurs.

8. Certificate Regarding Payment. Upon the request of any Owner or prospective purchaser or encumbrancer of a Lot the Association shall issue a certificate stating whether or not all assessments respecting such Lot are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who in good faith rely thereon. The Association may charge a reasonable fee for issuance of each such certificate.

9. Effect of Nonpayment -- Remedies. Any assessment not paid when due shall, together with the hereinafter provided for interest and costs of collection, be, constitute, and remain a continuing lien on the Lot, provided, however, that any such lien will be subordinate to the lien or equivalent security interest of any first mortgage on

the Lot recorded prior to the date any such assessments become due. The person who is the Owner of the Lot at the time the assessment falls due shall be and remain personally liable for payments. Such personal liability shall not pass to the Owner's successors in title unless expressly assumed by them. If the assessment is not paid within fifteen (15) days after the date on which it becomes delinquent, the amount thereof shall bear interest from the date of delinquency at the rate of one percent (1%) per month plus 5% late payment service fee and the Association may, in its discretion, bring an action either against the Owner who is personally liable or to foreclose the lien against the Lot. Any judgment obtained by the Association shall include reasonable attorney's fees, court costs, and each and every other expense incurred by the Association in enforcing its rights under this Declaration.

10. Tax Collection by Salt Lake County
Authorized. It is recognized that under the Declaration the Association will own the Common Areas and that it will be obligated to pay property taxes to Salt Lake County. It is further recognized that each Owner of a Lot as a Member of the Association will be required to pay to the Association for his prorata share of such taxes paid. Notwithstanding anything to the contrary contained in the Declaration, Salt Lake County shall be, and is, authorized to collect such prorata share of taxes directly from each Owner by inclusion of said share with the tax levied on each Lot.

VII. OPERATION AND MAINTENANCE

1. Maintenance of Lots. Each Lot and Living Unit shall be maintained by the owner thereof so as not to detract from the appearance of the Property and so as not to affect adversely the value or use of any other Lot or Living Unit. The Association shall have no obligation regarding maintenance or care of Lots or Living Units. Notwithstanding the foregoing provisions regarding Lot and Living Unit maintenance by Owners, in the event an Owner of any Lot in the Property shall fail to maintain his Lot and the Living Unit situated thereon in a manner satisfactory to either the Architectural Control Committee or Board of Trustees, the Association, after approval by 2/3 majority vote of the Board of Trustees, shall have the right, through its agents, employees or through an independent contractor to enter upon his Lot and to repair, maintain, and restore the Lot and the exterior of the Living Unit and any other improvements erected thereon. The cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject.

2. Operation and Maintenance by Association.
The Association, or its duly delegated representative,

shall provide for such maintenance and operation of the Common Areas as may be necessary or desirable to make them appropriately useable in conjunction with the Lots and to keep them clean, functional, attractive and generally in good condition and repair.

3. Insurance. The following provisions for insurance shall apply in the Development:

(a) Hazard Insurance. The Board shall procure and maintain from a company or companies holding a financial rating of Class VI or better from Best's Insurance Key Rating Guide 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 property owned by the Association (including all building service equipment, if any, and the like) with an Agreed Amount Endorsement or its equivalent, if available, or an Inflation Guard Endorsement and, if required by any first mortgagee of any Lot, Demolition and Contingent Liability from Operation of Building Laws Endorsements, an increased Cost of Construction Endorsement, an Earthquake Damage Endorsement, and such other endorsements as any first mortgagee of any Lot shall reasonably require. Each hazard policy of insurance shall include the standard mortgagee clause which either shall be endorsed to provide that any proceeds shall be paid to the Association for the use and benefit of the Mortgagees as their interests may appear or shall otherwise be endorsed to fully protect the interests of the Mortgagees. Moreover, the mortgagee clause shall provide that the insurance carrier shall notify each Mortgagee at least 10 days in advance of the effective date of any reduction in or cancellation of the policy. 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 sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage; and

(2) such other risks as shall customarily be covered with respect to projects similar in construction, location and use.

(b) Liability Insurance. The Board shall procure and maintain from a company or companies

BOOK 5399 PAGE 1483

holding a financial rating of Class VI or better from Best's Insurance Key Rating Guide a policy or policies (herein called "the Policy") of Public Liability Insurance to insure the Association, the Board and the Managing Agent and employees of the Association 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 the Board may decide, but not less than those limits customarily carried by properties of comparable character and usage in the County of Salt Lake nor less than \$1,000,000 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 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 of the named insureds as between themselves are not prejudiced. The Policy shall provide that the Policy may not be cancelled by the insurer unless it gives at least thirty (30) days' prior written notice thereof to the Board and every other person in interest who shall have requested in writing such notice of the insurer. 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.

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

(d) Fidelity Coverage. The Association shall maintain fidelity coverage to protect against

BOKS 099
REV 1 1984

dishonest acts on the part of officers, directors, managing agents (including employees thereof), trustees and employees of the Association and all others who handle, or are responsible for handling, funds of the Association. Such fidelity bonds shall:

(1) name the Association as an obligee;

(2) be written in an amount sufficient to provide protection which is in no event less than one-half (1/2) of the Association's estimated annual operating expenses and reserves;

(3) contain waivers of any defense based upon the exclusion of volunteers or persons who serve without compensation from any definition of "employee" or similar expression; and

(4) provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days' prior written notice to all first mortgagees of Residential Lots.

(e) Review of Insurance. The Board shall periodically and whenever requested by twenty percent (20%) or more of the Owners, review the adequacy of the Association's insurance program and shall report in writing the conclusions and action taken on such review to the Owner of each Lot and to the holder of any Mortgage on any Lot who shall have requested a copy of such report. Copies of every policy of insurance procured by the Board shall be available for inspection by any Owner.

(f) Lots Not Insured by Association. The Association shall have no duty or responsibility to procure or maintain any fire, liability, extended coverage or other insurance covering any Lot and acts and events thereon. Accordingly, Owners of Lots in the Development shall obtain fire, extended coverage and liability insurance to the full replacement value of all Living Units constructed on such Owner's Lot.

(g) If the Living Units are insured under a blanket or master type casualty insurance policy maintained by the Association, then such policy shall insure

the Living Units with fire and extended coverage for the full insurable value, with replacement cost coverage, and agreed value endorsement. Such policy shall also meet all other requirements and contain such other coverage and endorsements as may be required from time to time by the Mortgagee or its designee.

VIII. DUTIES AND POWERS OF THE ASSOCIATION

1. Duties of the Association. Without limiting any other duties which may be imposed upon the Association by its Articles of Incorporation or this Declaration, the Association shall have the obligations and duties 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:

(a) The Association shall accept all Owners as members of the Association.

(b) The Association shall accept title to all Common Areas conveyed to it by Declarant.

(c) The Association shall maintain, repair and replace the Common Areas (including Exclusive Parking Area) and, at the discretion of the Board, any property dedicated to any governmental authority and situated immediately adjacent to the Property if the Board determines that such dedicated property is not being maintained or landscaped in a condition comparable to the Common Areas.

(d) 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.

(e) The Association shall obtain and maintain in force the policies of insurance required by Article VII of this Declaration.

(f) The Association may at all times employ a responsible 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 such as shall be specified by the Board. Any agreement appointing a Managing Agent shall be terminable by the Board for cause upon

thirty (30) days' written notice thereof and at any time without cause or payment of a termination fee upon ninety (90) 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 one-year periods. Any Managing Agent shall be an independent contractor and not an agent or employee of the Association.

2. Powers and Authority of the Association. The Association shall have all the powers set forth in its Articles of Incorporation, 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 this Declaration, 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:

(a) The Association shall have the power and authority at any time and from time to time and without liability to any Owner for trespass, damage or otherwise, to enter upon any Lot for the purpose of maintaining and repairing such Lot or any improvement thereon if for any reason the Owner fails to maintain and repair such Lot or improvement, or for the purpose of removing any improvement constructed, reconstructed, refinished, altered or maintained upon such Lot in violation of Article IX of this Declaration. 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 in 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 this Declaration or any rules and regulations promulgated by the Board, or to enforce by mandatory injunction or otherwise all of the provisions of this Declaration and such rules and regulations.

(b) In fulfilling any of its duties under this Declaration, including its duties for the maintenance, repair, operation or administration of the Common Areas and Lots (to the extent necessitated by the failure of the Owners of such Lots) or in exercising any of its rights to construct improvements or other work upon any of the Common Areas, and provided that any contract for goods or services having a term of more than one (1) year shall state that it may be terminated by either party at the end of the first year or at any time thereafter upon not less than ninety (90) days' written notice, the Association shall have the power and authority (i) to pay and discharge any and all liens placed upon any Common Areas on account of any work done or performed by the Association in the fulfillment of any of its obligations and duties of maintenance, repair, operation or administration and (ii) 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 Declarant, the Association, the members of the Board, the members of the Architectural Control Committee and the Owners;

(3) Such utility services, including (without limitation) water, sewer, trash removal, electrical, telephone and gas services, as the Board may from time to time deem 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.

(c) The Board may delegate to the Managing Agent any of its powers under this Declaration; provided, however, that the Board cannot delegate to such Managing Agent the power to execute any contract binding on the Association for a sum in excess of \$1,000.00 nor the power to sell, convey, mortgage or encumber any Common Areas.

3. Association Rules. The Board from time to time and subject to the provisions of this Declaration may adopt, amend, repeal and enforce rules and regulations governing, among other things: (a) the use of the Common Areas, including but not limited to Exclusive Parking Area and the Recreational Vehicle Parking Area; (b) the use of any roads or utility facilities owned by the Association; (c) the collection and disposal of refuse; (d) the maintenance of animals on the Property; and (e) such reasonable rules, regulations and procedures as may be necessary or desirable to aid the Association in performing any of its functions or to insure that the Property is maintained and used in a manner consistent with the interests of the Owners.

4. Limitation of Liability. No 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, the Committee or the Managing Agent.

IX. USE RESTRICTIONS

1. Use of Common Areas. The Common Areas shall be used only in a manner consistent with their community nature and with the use restrictions applicable to Lots and Living Units.

2. Use of Lots and Living Units. Except as herein otherwise provided with respect to Lots 1 through 10, 37 through 46, Area A and Area B, which may be structures other than Living Units, all Lots are or will be improved with Living Units and are restricted to such use. Each Lot has been or will be improved with a structure containing one Living Unit, to be used only as a single-family residence.

3. Building and Construction. Except as hereinafter provided, no structures shall be erected, altered, placed or permitted to remain on any Lot other than one Living Unit of the following construction:

(a) All exterior front elevations must be composed of at least fifty percent (50%) masonry;

(b) All exterior finished materials must be "maintenance free" such as masonry, aluminum, vinyl, including soffit and fascia or the like; and

(c) Each Lot shall be landscaped pursuant to a typical landscaping plat approved by Salt Lake County, and shall contain a sprinkling system, to be completed within sixty (60) days of final inspection of the Living Unit, provided that if such final inspection occurs during the months of September through April, inclusive, landscaping and sprinkling shall be installed by the last day of May.

(e) Carports and outside storage area may be erected on any Lot, subject to the approval of the Architectural Control Committee as provided in Section IX of this Declaration, and to building permit being issued by the appropriate governmental agency.

4. Trees. There shall be planted in the area between the curb and sidewalk adjacent to each Lot in the Development such number and kind of trees as Declarant designates or plants. It shall be the duty of the Lot Owner nearest to such tree or trees to water and otherwise maintain the same.

5. Yard Light. There shall be installed yard lights at a point or area between the sidewalk and the

front line of certain Living Units in the Development as designated by Declarant. It shall be the duty of the group of Owners for whose benefits such yard lights are installed to pay the power charges therefor unless the Association elects to pay such charges.

6. Plans and Specifications; Location of Buildings. Plans and specifications and location of Living Units on Lots shall be as designated by Declarant. Any change in plans and specifications or location of Living Units on Lots shall be effective only with the written approval of Declarant.

7. Landscaping; Lot Maintenance; Animals. Every Owner in the Development shall maintain or cause to be maintained attractive landscaping and maintain the Lot, Living Unit and other improvements thereon in a clean and attractive manner. No animals, bird, or fowl, including but not limited to, horses, hogs, cattle, goats, sheep, rabbits, dogs, cats, pigeons, pheasants, game birds, game fowl, or poultry except as provided in Paragraph 8 below shall be kept or maintained on any Lot.

8. Restrictions on Animals. Dogs and cats may be kept on any Lot in reasonable numbers as pets, but not for any commercial use or purpose. The Board shall have the right to determine what is a reasonable number of such animals.

9. Signs. No signs, billboards, or advertising structures may be erected or displayed on any of the Lots except "Westbrook Park" and signs in connection with business buildings, if any, on Lots 1 through 10, 37 to 46, Area A and Area B, and, except that a single sign, not more than 3' x 5' in size advertising a specific Lot for sale or for rent may be displayed on any Lot. No trash, ashes or other refuse shall be thrown or dumped on any Lot or any part thereof.

10. No Leasing of Common Areas. None of the Common Areas, parking space or other amenities contemplated as a part of the Development shall be leased by Declarant to the Owners or to the Association nor shall the same be subject to any other restrictions in favor of the Declarant or any affiliate of Declarant.

11. Quiet Enjoyment. No noxious or offensive trade or activities shall be carried on upon any Lot or any part of the Property, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the Owners of his respective Living Unit or which shall in any way increase the rate of insurance.

12. Temporary Structures and Equipment. No structure of a temporary character, trailer, tent, shack, garage, barn, or other out building shall be located or used on any Lot at any time as a residence, either temporarily or permanently. No trailer, camper, boat, truck larger than a pickup, motor home, or similar equipment (recreational equipment) shall be permitted to be parked on the Exclusive Parking Area except for temporary parking. Recreational equipment shall be parked in the Recreational Parking Area only unless the Board of Trustees shall otherwise determine and notify Members in writing.

13. Garbage Removal, Etc. All rubbish, trash and garbage shall be regularly removed from the Development, and shall not be allowed to accumulate thereon. All refuse containers, woodpiles, storage areas and machinery and equipment shall be prohibited upon any Lot unless obscured from view of adjoining Lots and streets by a fence, building or appropriate screen.

14. Storage of Furniture and Other Items. No furniture, fixtures, appliances or other goods and chattels shall be stored in such a manner as to be visible from neighboring Lots, roads or Common Areas.

15. Lot Maintenance. Each Lot and all improvements located thereon shall be maintained by the Owner thereof in good condition and repair, and in such manner as not to create a fire hazard, all at the Owner's expense. All walls and fences on common boundary lines or corners separating two or more Residential Lots shall be maintained jointly in equal shares by the Owners of the Lots abutting such fence or wall, provided that each Owner shall be responsible for painting the side of any party wall or fence facing his Residential Lot.

16. Planting and Maintenance of Vegetation. Vegetation within any Lot shall be planted and maintained in good condition at the Owner's expense in such a manner as to prevent or retard shifting or erosion.

17. Garbage Containers. All garbage, rubbish, and trash shall be kept in covered containers. In no event shall such containers be maintained so as to be visible from neighboring Lots, roads or Common Areas. The storage, collection and disposal of garbage, rubbish and trash shall be in strict compliance with applicable laws and the rules and regulations of the Board.

18. No Resubdividing. No Lot shall be resubdivided.

19. Accessory Structures. No accessory structures shall be constructed, placed or maintained upon any Lot prior

to the construction of a Living Unit thereon, except by written permit of the Board; provided that this restriction shall not prohibit (i) temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of a Living Unit, or (ii) any structure upon any Lot to be used by Declarant as a sales office or otherwise in conjunction with the development of Lots by Declarant.

20. Clothesline and Airing. Outside clotheslines and other outside clothes drying or airing facilities shall be maintained in such a manner and in such location as not to be visible from roads.

21. No Parking of Mobile Home, etc. on Lot. Except to the extent used by Declarant in connection with and during the development and sale of Lots, no mobile home or similar facility, shall be placed upon any Lot, the Common Areas or adjoining public streets except for temporary storage in strict accordance with the rules and regulations of the Board. No stripped down, wrecked or junk motor vehicle shall be kept, parked, stored or maintained on any Lot, the Common Areas or adjoining public streets.

22. Exterior Fires Prohibited. There shall be no exterior fires, except fires started and controlled by the Association incidental to the maintenance and preservation of any portion of the Property and barbecue and incinerator fires contained within facilities or receptacles and in areas designated by the Board for such purpose. No Owner shall cause or permit any condition which creates a fire hazard, creates a nuisance, or is in violation of any fire prevention regulations.

23. Exemption of Declarant. The provisions of this Article IX shall not apply to any improvement or structure constructed on any Lot or the Common Areas by Declarant prior to the time that such Lot or Common Areas are conveyed by Declarant to a purchaser or the Association, as the case may be; and the Declarant shall have the right to use any Lot or Living Unit owned by it, and any part of the Common Areas reasonably necessary or appropriate, in furtherance of any construction, marketing, sales, management, promotional or other activities designed to accomplish or facilitate improvement of the Common Areas or improvement and sale of all Lots owned by Declarant. Further, the Declarant, its successors or assigns, reserves the right to construct on Lots 1 through 10, 37 through 46, Area A and Area B, and to own and operate thereon, or any portion thereof, office or business structures as the applicable zoning ordinances will allow.

24. Enforcement of Land Use Restrictions. The following persons shall have the right to exercise or seek

any remedy at law or in equity to enforce strict compliance with this Declaration:

- (a) Declarant, so long as it has any interest in any of the Property or any of the Undeveloped Land,
- (b) any Owner, or
- (c) the Association.

The prevailing party in an action for the enforcement of any provisions of this Declaration shall be entitled to collect court costs and reasonable attorneys' fees.

X. ARCHITECTURAL CONTROL

1. Architectural Control Committee. The Board of Trustees of the Association shall appoint a three-member Committee the function of which shall be to insure that all exterior of Living Units and landscaping within the Property harmonize with existing surroundings and structures. The Committee need not be composed of Owners. If such a Committee is not appointed the Board itself shall perform the duties required of the Committee.

2. Submission to Committee. No Living Unit, accessory or addition to a Living Unit in the Development which is visible from other Lots, landscaping, or other improvement of a Lot which is visible from other Lots shall be constructed, maintained, or accomplished, and no alteration, repainting, or refurbishing of the exterior of any Living Unit shall be performed, unless complete plans and specifications therefor have first been submitted to and approved by the Architectural Control Committee.

3. 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 Lots within the Property conform to and harmonize with existing surroundings and Buildings.

4. 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. In the event the Committee fails to take any action within such period it shall be deemed to have approved the material submitted.

5. Disclaimer of Liability. Neither the Architectural Committee, nor any member thereof acting in good faith shall be liable to the Association or to any

Owner for any damage, loss, or prejudice suffered or claimed on account of (a) the approval or rejection of, or the failure to approve or reject, any plans, drawings and specifications, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, (c) the development or manner of development of any of the Property, or (d) any engineering or other defect in approved plans and specifications.

6. Nonwaiver. The approval by the Architectural Committee of any plans and specifications for any work done or proposed shall not constitute a waiver of any right of the Architectural Committee to disapprove any similar plans and specifications.

7. Completion of Construction. Once begun, any improvements, construction, landscaping or alterations approved by the Architectural Committee shall be diligently prosecuted to completion in strict accordance with the plans and specifications approved by the Architectural Committee.

8. Exception for Declarant. The foregoing provisions of this Article X shall not apply to any improvement, construction, landscaping, or alteration which is carried out by Declarant on any Lot or on any part of the Common Areas and which occurs at any time during the ten-year period following the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah.

9. Declarant's Obligation. Declarant hereby covenants in favor of each Owner: (a) that all Living Units erected by it and all improvement of the Common Areas accomplished by it shall be architecturally compatible with respect to one another; and (b) that on or before two (2) years from the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah, there shall be substantially completed and usable all open spaces in the locations shown on the Plat.

XI. CONDEMNATION

If at any time or times 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 and shall be used promptly by the Association to the extent necessary for restoring or replacing any improvements on the remainder of the Common Areas. Upon completion of such work and payment in full therefor, any proceeds of condemnation then or thereafter in the hands of the Association which are proceeds

for the taking of any portion of the Common Areas shall be disposed of in such manner as the Association shall reasonably determine; provided, however, that in the event of a taking in which any Lot is eliminated, the Association shall disburse the portion of the proceeds of the condemnation award allocable to the interest of the Owner of such Lot to such Owner and any first mortgagee of such Lot, as their interests shall appear, after deducting the proportionate share of said Lot in the cost of debris removal. Notwithstanding anything to the contrary herein contained, no Owner or other party shall have priority over an institutional holder of any first mortgage lien or equivalent security interest on a Lot with respect to distribution to such Lot of the proceeds of any award or settlement.

XII. RIGHTS OF FIRST MORTGAGEES

Notwithstanding any other provisions of this Declaration, the following provisions concerning the rights of first Mortgagees shall be in effect:

1. Preservation of Regulatory Structure and Insurance. Unless the Owners of at least seventy-five percent (75%) of the Lots (not including Lots owned by Declarant) and all of such Owners' first Mortgagees, if any, shall have given their prior written approval, the Association shall not be entitled:

(a) by act or omission to change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the Architectural design or the exterior appearance of Living Units, the exterior maintenance of Living Units under certain conditions provided in Article X, or the upkeep of the Common Areas of the Property;

(b) to fail to maintain fire and extended coverage on insurable portions of the Common Areas on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost); or

(c) to use hazard insurance proceeds for losses to the Common Areas for other than the repair, replacement or reconstruction of improvements on the Common Areas.

This Section 1 may be amended as provided in Section 2 of Article XIII hereof, except that such amendment must be approved by a vote otherwise sufficient to authorize action under this subsection prior to such amendment.

2. Preservation of Common Area; Change in Method of Assessment. Unless the Association shall receive the prior written approval of all first mortgagees (based on one vote for each Mortgagee) of the Lots and (2) the Owners of at least seventy-five percent (75%) of the Lots (not including Lots owned by Declarant) the Association shall not be entitled:

(a) by act or omission to seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas, except to grant easements for utilities and similar or related purposes, as herein elsewhere reserved;

(b) except as to the Association's right to grant easements for utilities and similar or related purposes, the Common Areas may not be alienated, released, transferred, hypothecated or otherwise encumbered; or

(c) to change the ratio or method of determining the obligations, assessments, dues or other charges which may be levied against a Lot or the Owner thereof.

This Section 2 may be amended as provided in Section 2 of Article XIII hereof, except that such amendment must be approved by a vote otherwise sufficient to authorize action under this subsection prior to such amending, including the approval of all institutional first Mortgagees.

3. Notice of Matters Affecting Security. The Association shall give written notice to any first mortgagee of a Lot requesting such notice whenever:

(a) there is any default by the Owner of the Lot subject to the first mortgage in performance of any obligation under this Declaration or the Articles or Bylaws of the Association which is not cured within thirty (30) days after default occurs; or

(b) there occurs any substantial damage to or destruction of any Living Unit or any part of the Common Areas involving an amount in excess of, or reasonably estimated to be in excess of \$10,000.00. Said notice shall be given within ten (10) days after the Association learns of such damage or destruction.

(c) there is any condemnation proceedings or proposed acquisition of a Lot or of any portion of the Common Areas within ten (10) days after the Association learns of the same.

(d) any of the following matters come up for consideration or effectuation by the Association:

(i) abandonment or termination of the Planned Unit Development established by this Declaration;

(ii) material amendment of the Declaration or the Articles or By-Laws of the Association except to expand the Property by annexation of additional lands as provided in the Declaration; or

(iii) any decision to terminate professional management of the Common Areas and assume self-management by the Owners.

4. Notice of Meetings. The Association shall give to any first Mortgagee of a Lot requesting the same, notice of all meetings of the Association; and such first Mortgagees shall have the right to designate in writing a representative to attend all such meetings.

5. Right to Examine Association Records. Any institutional holder of a first mortgage (or trust deed) of a Lot in the Development will, upon request, be entitled to (i) examine the books and records of the Development during normal business hours; (ii) receive an annual audited financial statement of the Development within 90 days following the end of any fiscal year of the Development; and (iii) written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings.

6. Right to Pay Taxes and Charges. First 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 hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for the Common Areas; and first mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. Declarant, for the Association as owner of the Common Areas, hereby covenants and the Association by acceptance of the conveyance of the Common Areas, whether or not it shall be so expressed in such conveyance, is deemed to covenant and agree to make such reimbursement.

7. Exemption from Any First Right of Refusal. Any first mortgagee who obtains title to the Lot subject to the first mortgage pursuant to the remedies provided in the first mortgage, or by foreclosure of the first mortgage, or by deed or assignment in lieu of foreclosure, or by sale pursuant to any power of sale shall be exempt from any "right of first refusal" which would otherwise affect the Lot.

8. Rights Upon Foreclosure of Mortgage. Each holder of a first mortgage (or deed or trust) on a Lot who comes into possession of the Lot by virtue of foreclosure

of the Mortgage, or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, will take the Lot free of any claims for unpaid assessments and charges against the Lot which accrue prior to the time such holder comes into possession of the Lot, except for claims for a share of such assessments or charges resulting from a reallocation of such assessments or charges to all Lots including the mortgaged Lot.

9. Restrictions Without Approval of Mortgagees. Except as to the Association's right to grant easements for utilities and similar or related purposes, the Common Areas may not be alienated, released, transferred, hypothecated, or otherwise encumbered without the approval of all holders of first mortgage liens on Lots in the Development.

10. Mortgagees Rights Concerning Amendments. Except as concerns the right of Declarant to amend the Declaration and related documents as contained in Article XIII of the Declaration, no material amendment to the Declaration, By-Laws or the Articles of Incorporation of the Association shall be accomplished or effective unless at least 75% of the Mortgagees (based on one vote for each Mortgagee) of the individual Lots have given their prior written approval to such amendment.

XIII. MISCELLANEOUS

1. Notices. Any notice required or permitted to be given to any Owner under the Provisions of this Declaration shall be deemed to have been properly furnished if delivered or mailed, postage prepaid, to the person named as the Owner, at the latest address for such person as reflected in the records of the Association at the time of delivery or mailing. Any notice required or permitted to be given to the Association may be given by delivering or mailing the same to the Managing Agent or the President 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 Chairman or any member of such Committee.

2. Amendment. Except as otherwise provided in the Declaration, this Declaration may be amended by:

(a) the affirmative vote of a majority of the Owners, and

(b) the written consent of Declarant, if such amendment is to be adopted at any time when Declarant holds Class B membership in the Association, and

(c) the filing of an instrument for record in the office of the County Recorder of Salt Lake County, Utah, executed by any two officers of the Association and certifying that such amendment has been duly adopted by the affirmative vote of a majority of the Owners and, if required, has the written consent of Declarant.

Written notice setting forth the purpose of the meeting and the substance of the amendment proposed shall be sent to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date. The quorum required for any such meeting shall be as follows: At the first meeting called the presence of Members or of proxies entitled to cast fifty-one percent (51%) of all the votes 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 requirement set forth in the foregoing portion of this Section 3) at which a quorum shall be one-half 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. Until all portions of the Undeveloped Land are annexed to the Property or until Declarant's right to annex land to the Property otherwise terminates, Declarant reserves the right to amend this Declaration insofar as it applies to any land annexed at or after the date of such amendment, provided that (a) any such amendment shall be set forth in a supplemental declaration annexing land to the Property, (b) no such amendment may affect the voting rights of Owners and (c) no such amendment may decrease the proportionate share of Association assessments which would otherwise be payable by the owners of the annexed land. Declarant may at any time amend this Declaration so as to limit, diminish or eliminate all or any of the reserved rights or benefits of Declarant herein, provided that any such amendment shall be effective only after being filed of record in the office of the County Recorder of Salt Lake County, Utah.

3. Consent in Lieu of Vote. In any case in which this Declaration requires for authorization or approval of a transaction the assent or affirmative vote of a stated percentage of the votes present or represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Members entitled to cast at least the stated percentage of all membership votes outstanding in connection with the class of membership concerned. The following additional provisions shall govern any application of this Section 3.

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

(b) The total number of votes required for authorization or approval under this Section 3 shall be determined as of the date on which the last consent is signed.

(c) Except as provided in the following sentence, any change in ownership of a Lot which occurs after consent has been obtained from the Owners thereof shall not be considered or taken into account for any purpose. A change in ownership which would otherwise result in an increase in the total number of Class A votes outstanding shall, however, be effective in that regard and shall entitle the new Owner to give or withhold his consent.

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

4. Reserve Fund. The Association shall establish an adequate reserve to cover the cost of reasonably predictable and necessary major repairs and replacements of the Common Areas and exterior maintenance and shall cause such reserve to be funded by regular monthly or other periodic assessments against the Lot Owners rather than by special assessments.

5. Lease Provisions. Any Owner may lease his Lot, provided, however, that any lease agreement between a Lot Owner and a Lessee must be in writing and must provide, inter alia, that:

(a) The terms of the Lease shall in all respects be subject to the provisions of the Declaration, Articles of Incorporation of the Association and

(b) Any failure by the Lessee to comply with the terms of such documents shall constitute a default under the lease.

6. 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.

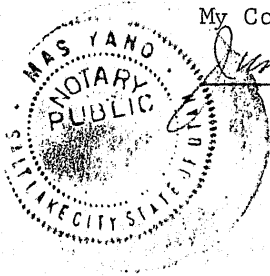
7. Interpretation. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so

a Utah Corporation, and that the within foregoing instrument was signed in behalf of said corporation, by authority of a resolution of its Board of Directors and said Gorm V. Klungervik duly acknowledged to me that said corporation executed the same and that the seal affixed is the seal of the corporation.

Mas Yano
Notary Public
Residing at Salt Lake City, Utah

My Commission Expires:

June 28, 1980.



BOOK 5099 PAGE 1502

KATIE L. DAXON
RECORDER
SALT LAKE COUNTY,
UTAH

MAY 12 3 25 PM '80
Filed & Return under date
\$ _____
REF _____
230 & 200 E
84111

Mas Yano
Notary Public

6900

EXHIBIT "A"

(Undeveloped Land)

The following described lands situated in Salt Lake County, State of Utah, to-wit:

Parcel A:

Beginning at a point which is 662.36 ft. North 89°56'59" East, and 1075.16 ft. South 0°07'30" East from the N½ Corner of Section 29; T. 1 S., R. 1 W., Salt Lake Base & Meridian; thence North 89°52'30" East 244.09 ft.; thence North 28°06'15" East 87.12 ft.; thence North 0°07'30" West 250.70 ft.; thence North 89°52'30" East 233.61 ft.; thence North 0°07'30" West 132.85 ft.; thence East 141.09 ft.; thence South 0°07'30" East 1086.28 ft.; thence West 660.00 ft.; thence North 0°07'30" West 624.84 ft.; to the point of beginning containing 12.76 acres

Parcel B:

Beginning at a point 986.77 ft. N. 89°56'59" E. along the section line from the N½ Corner of Section 29, T.1 S., R.1W., S.L.B. & M.; thence South 245.33 ft.; thence S. 7°30' W. 155.00 ft.; thence South 215.00 ft.; thence East 357.16 ft.; thence N. 0°07'30" W. 614.30 ft.; thence S. 89°56'59" W. 335.58 ft. to the point of beginning, containing 4.88 acres.

Parcel C:

Commencing 33 ft East from the S½ corner of Section 20, Township 15, Range 1 W, SLB & M, thence N 0°04'50" W 33.006 ft.; thence N 89°54'34" E. 595.25 ft; thence N. 370.24 ft.; thence E 754.79 ft; thence S 0°05'29" E. 402.04 ft; thence W 1347 ft. to beginning.

Parcel D:

Beginning at a point North 0°07'30" West 1165.86 feet and South 89°55'45" East 33.0 feet from the center of Section 29, Township 1 South, Range 1 West, Salt Lake Base and Meridian, said point also being North 89°55'45" West 2614.73 feet and North 0°07'30" West 1165.82 feet from the East quarter corner of said Section 29, in the County of Salt Lake, State of Utah, and running thence South 0°07'30" East 225 feet; thence South 89°59'55" East 627 feet; thence North 0°06'32" West 225.193 feet; thence North 89°58'55" West 627.06 feet to the point of BEGINNING.

The land described in Article II of the Declaration is the only land that is subjected to the provisions of the Declaration. A description of the Undeveloped Land is set forth herein solely for purposes of identification. Some of the Undeveloped Land is not owned by Declarant and may never be owned by it. The Declaration is not intended to create and shall not be deemed to constitute any lien, encumbrance, restriction, or limitation upon any real property

BOOK 5099 PAGE 1503