

After recordation, return to:

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Provo, UT 84601

**AMENDED AND RESTATED  
DECLARATION OF EASEMENTS, COVENANTS,  
CONDITIONS AND RESTRICTIONS  
(Including Association Bylaws)**

**DEERHAVEN ESTATES**

**Planned Unit Development**

**Provo, Utah County, Utah**

**THIS AMENDED AND RESTATED DECLARATION** (the "Declaration") is made by **EMPRISE, L.L.C.**, a Utah limited liability company (the "Declarant"), in its capacity as the successor developer of **Deerhaven Estates**, a Planned Unit Development in Provo, Utah (the "Development").

**RECITALS**

A. The Development was commenced in 1983 by a predecessor developer who prepared and recorded the Original Plat and the Original Declaration.

B. The Original Declaration requires that any amendment thereto during the first 20 years following its recordation (December 28, 1983) be by written instrument signed by not less than 90% of the Lot Owners within the Development.

C. The Original Plat was amended on June 18, 1997, by recordation of the Plat which describes thereon 120 Lots, of which 67 are currently owned of record by Declarant and the balance by those designated on the Signature Pages of this Declaration as "Consenting Owners".

D. Declarant and Consenting Owners deem the provisions and coverage of the Original Declaration to be in need of clarification and updating for purposes of clarity, unifying and solidifying the Association, encouraging the build-out of unimproved Lots, and providing financial stability to the Development and the Association.

**WHEREFORE, IT IS HEREBY DECLARED AS FOLLOWS:**

**ARTICLE I**

**PURPOSE AND EFFECTUATION**

1.01 **Purpose.** The purpose of this instrument is to provide for the preservation of the values of Lots, Units and Common Areas within **Deerhaven Estates Planned Unit Development** in Provo, Utah, and for the maintenance of the roadways, driveways, sidewalks, parking, open spaces, landscaping, and all other Common Areas therein.

1.02 **Effectiveness.** The provision of this Declaration shall become effective upon its recordation with the Recorder of Utah County, Utah. From and after the effective date hereof each part of the Development (Lots, and Units and Common Areas) lying within the boundaries of the Development shall constitute constituent parts of a single planned unit development.

**ARTICLE II**

**DEFINITIONS**

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

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

**Assessment** shall mean the amount which is to be levied and assessed against Lots and paid by each Owner to the Association for Association expenses as herein set forth.

**Association** shall mean **DEERHAVEN ESTATES**, a Utah nonprofit corporation, and its successors and assigns.

**Board** shall mean the Board of Trustees of the Association.

**Bylaws** shall mean and refer to the Bylaws of the Association as set forth and embodied in this Declaration in Articles XI, XII and XIII as the same may be amended from time to time.

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

**Declarant** shall mean **EMPRISE, L.L.C.**, a Utah limited liability company, its successors and assigns, if any, as developers of the Development.

**Declaration** shall mean this **Amended and Restated Declaration of Easements, Covenants, Conditions and Restrictions (Including Bylaws) of Deerhaven Estates Planned Unit Development**, as the same may be supplemented or amended from time to time.

**Development** shall mean the planned unit development known as **Deerhaven Estates** as it exists at any given time.

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

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

**Managing Agent** shall mean any person or entity appointed or employed as Managing Agent of the Development and/or the Association by the Board.

**Mortgage** shall mean any recorded first mortgage or first deed of trust encumbering a Lot; and **Mortgagee** shall mean any mortgagee or beneficiary under a mortgage.

**Original Declaration** shall mean that certain **Declaration of Covenants, Conditions and Restrictions for Deerhaven Estates, A Planned Unit Development** recorded in the office of the Recorder of Utah County, Utah, on December 28, 1983, as Entry 39284, Book 201, Page 747.

**Original Plat** shall mean that certain subdivision plat entitled **Deerhaven Estates, A Planned Unit Development** recorded in the office of the Recorder of Utah County, Utah, on December 28, 1983, as Entry 39283 Map Filing #2948.

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

**Plat** shall mean and refer to the subdivision plat relating to the Development entitled **Amended Deerhaven Estates Planned Unit Development, Provo City, Utah County, Utah**, prepared and certified to by F. Lewis Pratt (a duly registered Utah Land Surveyor holding Certificate No. 3834), executed and acknowledged by the then Owner of record, accepted by Provo City, and filed for record in the office of the County Recorder of Utah County, Utah on June 18, 1997, as Entry 46345 Map #7102.

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

**Rules and Regulations** shall mean the Association's rules and regulation authorized and adopted by the Board pursuant to Section 12.03 of this Declaration.

**Unit** shall mean a structure which is designed, constructed and intended for use or occupancy as a single family residence on a Lot, together with all improvements located on the same Lot and used in conjunction with such residence, including anything located within or without said Unit (but designated and designed to serve only that Unit) such as a patio, a deck, appliances, electrical receptacles and outlets, air conditioning compressors and other air conditioning apparatus; provided however, that roofs, exterior surfaces of Units (and/or the building in which Units exist) and patio fences, shall be deemed to be Limited Common Area designated for the exclusive use of the particular Units to which such items appertain (even though not designated as Limited Common Areas on the Plat). **Original Unit** shall mean any of the 26 Units constructed on the following Lots (and known by the number thereof) as follows: 1A thru D; 2A thru D; 3A thru D; 4A thru D; 5A thru D; 6A thru D; and 9A and B.

### ARTICLE III

#### PROPERTY DESCRIPTION

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

Commencing at a point located on the South boundary of 1300 South Street, Provo, Utah, said point being located South 549.67 feet and East 546.34 feet from the N.W. corner Section 17, Township 7 South, Range 3 East, Salt Lake Base and Meridian; thence South 89°56'49" East 972.09 feet along the South boundary of 1300 South; thence South 00°03'11" West 229.40 feet; thence North 89°10'59" West 162.76 feet; thence South 00°10'44" East 273.93 feet; thence North 89°56'49" West 527.36 feet along the North boundary of 1400 South; thence North 00°03'11" East 263.57 feet; thence North 89°24'10" West 283.10 feet partially along a fence line; thence North 00°03'11" East 234.90 feet to the point of beginning.

**(Amended Deerhaven Estates Planned Unit Development, Entry 46345 Map #7102, Utah County Recorder, Provo, Utah)**

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

**RESERVING UNTO DECLARANT**, however, such easements and rights of ingress and egress over, across, through, and under the said property and any improvements (including any building) now or hereafter constructed thereon as may be reasonably necessary for Declarant (in a manner which is reasonable and not inconsistent with the provisions of this Declaration) to construct and complete the building and each of the Units and all of the other improvements described in this Declaration or in the Plat and to do all things reasonably necessary or proper in connection therewith and to improve portions of the said

property with such other or additional improvements, facilities, or landscaping designed for the use and enjoyment of all the Owners as Declarant may reasonably determine to be appropriate. If, pursuant to the foregoing reservations, the said property or any improvement thereon is traversed or partially occupied by a permanent improvement or utility line, a perpetual easement for such improvement or utility 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 (10) years after the date on which this Declaration is filed for record in the office of the County Recorder of Utah County, Utah.

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

3.02 **Division into Lots.** The Development is divided into 120 Lots, as set forth and described on the Plat, with appurtenant and equal rights and easements of use and enjoyment in and to the Common Areas, as well as appurtenant obligations pertaining to assessments, maintenance, etc., all as set forth in this Declaration.

#### ARTICLE IV

##### DUTIES AND OBLIGATIONS OF OWNERS

4.01 **Maintenance and Repairs.** Each Owner shall at his own cost maintain his Lot and any Unit and other improvements thereon in good condition and repair at all times; provided that any portion thereof that is deemed to be Limited Common Area shall be maintained and repaired by the Association to the extent provided in Section 12.01(d) of this Declaration. In the event of the damage or destruction of any Unit, the Owner of the Lot on which such Unit is situated shall either rebuild the same within a reasonable time or shall raze the remains thereof so as to prevent the unsightly appearance and dangerous condition of a partially destroyed building in the Development. **The painting or repainting, remodeling, rebuilding or modification of any Unit exteriors or parts thereof must be submitted to and approved by the Architectural Control Committee pursuant to its procedures.** Notwithstanding the obligations of the Association to maintain and repair certain items pertaining to Unit exteriors, roofs, and patio fences as set forth in Section 12.01(d), no Owners shall openly or wantonly neglect or fail to do everything possible to keep his Lot and Unit in good and attractive condition and repair at all times.

4.02 **Insurance.** Each Owner shall procure and maintain in force the insurance policy for Unit contents referred to in Section 8.06.

4.03 **Assessments and Rules Observance.** Each Owner shall be responsible for the prompt payment of any Assessments provided for in this Declaration and for the observance of the Rules and Regulations promulgated by the Association from time to time.

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

## ARTICLE V

### PROPERTY RIGHTS AND CONVEYANCES

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

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

Lot \_\_\_\_\_ Building \_\_\_\_\_ as identified in the Plat recorded in the office of the Utah County Recorder as Entry 46345 Map # 7102 contained within Amended Deerhaven Estates Planned Unit Development, SUBJECT TO the Declaration of Easements, Covenants, Conditions and Restrictions (Including Bylaws) of Deerhaven Estates Planned Unit Development recorded in the office of the Utah County Recorder in Book \_\_\_\_\_, at Page \_\_\_\_\_, as Entry \_\_\_\_\_ (as said Declaration may have heretofore been amended or supplemented), TOGETHER WITH a right and easement of use and enjoyment in and to the Common Areas described, and as provided for, in said Declaration (as said Declaration may have heretofore been amended or supplemented).

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

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

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

(a) The right of the Association to govern by reasonable Rules and Regulations the use of the Common Areas so as to provide for the enjoyment of the Common Areas in a manner consistent with the collective rights of all of the Owners;

(b) The right of the City of Provo, Utah, and any other governmental or quasi-governmental body having jurisdiction over the Development to enjoy access and rights of ingress and egress over and across any street or driveway, parking area, walkway, or open area contained within the Common Areas for the purpose of providing police and fire protection and providing any other governmental or municipal service; and

(c) The right of the Association to dedicate or transfer any part of the Common Areas to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association; provided that such dedication or transfer must first be assented to in writing by (i) the holder of each and every Mortgage that encumbers any Lot and (ii) the Owners of Lots to which at least sixty percent (60%) of the total votes in the Association appertain.

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

**5.06 Easements for Encroachments.** If any structure or Unit improvement (including without limitation, roof overhangs) constructed on any Lot whether or not constructed in replacement of the structure or improvement previously located thereon (so long as such structure or improvement is in substantially the same configuration and location as such prior structure or improvement) now or hereafter encroaches upon any other Lot or upon any portion of the Common Area, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall exist. If any structure (including without limitation, roof overhangs) on any Lot shall be partially or totally destroyed and then rebuilt in a manner intended to substantially duplicate the location and configuration of the structure so destroyed, minor encroachments of such structure upon any other Lot or upon any portion of the Common Area due to the reconstructed structure's being in a slightly different location than its predecessor shall be permitted; and valid easements for such encroachments and the maintenance thereof, so long as they continue, shall exist.

## ARTICLE VI

### USE RESTRICTIONS

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

**6.02 Residential Use.** Provo City zoning ordinances permit the Property to be used for single family residential use pursuant to applicable provisions of Provo City ordinances. Each Lot, Unit and Owner are subject to the uses and restrictions imposed by such zoning and no Lot or Unit shall be used, occupied, or altered in violation of such ordinances or so as to create a nuisance or to interfere with the rights of any other Owner.

**6.03 Prohibited Use and Nuisances.** The following uses and practices are specifically prohibited, in addition to any additional prohibitions which may, from time to time, be adopted by the Board pursuant to Section 12.03 of this Declaration:

(a) No Unit or any part thereof shall be used or occupied by any persons not coming within the definition of "Family" as such term is defined and intended in the Provo City ordinances as of the date hereof.

(b) No lease of any Unit shall be for less than the whole thereof; provided, however, that "housing contracts" shall not be a violation of this provision. All leases or contracts shall be in writing and contain a provision making such lease or contract subject to the provisions of this Declaration.

(c) No animals, livestock, or poultry of any kind shall be permitted on any Lot or within any Unit except such domesticated household pets or birds as are allowed pursuant to the Rules and Regulations, including leash laws, adopted by the Board pursuant to Section 12.03 of this Declaration.

(d) No parking of vehicles of any kind on the streets or parking areas within the Development shall be permitted except as set forth in Rules and Regulations adopted by the Board pursuant to Section 12.03 of this Declaration.

(e) No outside television or radio aerial or antenna, or other similar device for reception or transmission shall be permitted on any Lot or the exterior of any Unit except pursuant to written approval of the Architectural Control Committee pursuant to Rules and Regulations adopted by it and/or as set forth in this Declaration.

(f) No Unit within the Development shall (i) contain any coal or wood-burning fireplace, stove, or other similar device unless the same is EPA approved or unless such fireplace, stove or other device is fueled by natural gas only; or (ii) contain a swamp cooler.

## ARTICLE VII

### ARCHITECTURAL CONTROL

**7.01 Architectural Control Committee.** The Board of Trustees of the Association shall appoint a three-member Architectural Control Committee (the "Committee"), the function of which shall be to ensure that all improvements and landscaping within the Development harmonize with existing surroundings and structures. 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.

**7.02 Submission to Committee.** No Unit, accessory of or addition to a Unit which is visible from the Common Areas shall be constructed or maintained, and no alteration, repainting, or refurbishing of the exterior of any Unit shall be performed, unless complete plans and specifications therefor have first been submitted to and approved by the Committee. All initial construction of Units by or under Declarant's direction shall be deemed to have been submitted to and approved by the Committee.



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

7.04 **Approval Procedure.** Any plans and specifications submitted to the Committee shall be approved or disapproved by it in writing within 30 days after submission; provided, however, that plans and specifications for any replacement structure to be constructed in substantially the same configuration, location and architectural style and to be of substantially the same size, comparable or superior materials, and color scheme as its predecessor shall be approved or disapproved within 10 days after submission. In the event the Committee fails to take any action within such specified periods, it shall be deemed to have approved the material submitted except in those respects that such material is not in conformity with the provisions of this Declaration, as to which respects it shall be deemed disapproved.

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

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

7.07 **Declarant's Obligation.** Declarant hereby covenants in favor of each Owner (a) that all Units to be erected by it and all improvements of the Common Areas to be accomplished by it in the Development will be architecturally compatible with respect to one another; and (b) that on the date on which this Declaration is filed for record in the office of the County Recorder of Utah County, Utah, all Lots and Common Areas of the Development will be located in the approximate locations shown on the Plat.

## ARTICLE VIII

### INSURANCE

8.01 **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 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 Areas owned by the Association and of all the Units (and/or buildings in which such Units exist, including all building service equipment, if any, and the like) and all roofs, surfaces and structures comprising Units (regardless of any definition thereof in Article II), **but excluding contents of Units**, with an Agreed Amount Endorsement or its equivalent, if available, or an Inflation Guard Endorsement and such other endorsements as the Board may deem to be reasonable. Such insurance policy or policies shall name the Association as

insured for the benefit of the Owners and shall afford protection, to the extent applicable, against at least the following:

- (a) loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by vandalism, malicious mischief, windstorm, and water damage; and
- (b) such other risks as shall customarily be covered with respect to facilities similar in construction, location and use.

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

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

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

**8.04 Fidelity Coverage.** The Association may elect to maintain fidelity coverage to protect against dishonest acts on the part of officers, trustees, managing agents, directors and employees of the

Association and all others (including volunteers) who handle, or are responsible for handling, funds of the Association. In that event, such fidelity bonds shall:

- (a) name the Association as an obligee;
- (b) be written in an amount based upon the best business judgment of the Association and shall not be less than the estimated maximum of funds (including reserve funds) in the custody of the Association or the Managing Agent at any given time during the term of each bond, but in no event be less than a sum equal to three months' assessment on all Lots plus reserve funds;
- (c) 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
- (d) provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least 30 days' prior written notice to the insured.

**8.05 Review of Insurance.** The Board shall periodically, and whenever requested by Owners entitled to exercise at least twenty percent (20%) of the outstanding votes in the Association, 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 Unit 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 and any Mortgagee.

**8.06 Unit Owners Contents Policies.** Each Unit Owner shall be responsible to purchase and maintain in force a condominium/townhome type unit owner contents policy (State Farm HO6 or equivalent) (the "contents policy"). All claims for damage to an individual Unit must first be submitted by the Owner to the insurer under his contents policy. The Association will not be required to file claims on its master policy for any damage that either should or would have been covered under an Owner's contents policy.

**8.07 Other Insurance Provisions.** All insurance required pursuant to this Article VIII shall be written by insurers licensed in the State of Utah. Notwithstanding anything in this Article VIII to the contrary, any insurance required to be obtained by the Association pursuant to Sections 8.01, 8.02, 8.03 or 8.04 of this Article shall be required only to the extent that such coverage is reasonably obtainable at reasonable rates and is customarily obtained with respect to improvements or facilities having the same or similar characteristics of the Common Areas and Units or risks being insured.

## ARTICLE IX

### RIGHTS OF MORTGAGEES

**9.01 Title and Mortgagee Protection.** A breach of any of the covenants, provisions, or requirements of this Declaration shall not result in any forfeiture or reversion of title or of any other interest in a Lot or any other portion of the real property within the Development. A breach of any of the covenants, provisions, or requirements of this Declaration shall not defeat, impair, or render invalid the lien of or other rights under any Mortgage. Unless and until it enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu thereof, any Mortgagee interested under any Mortgage affecting a Lot or any other portion of the Development property shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, any of the covenants, provisions, or

requirements of this Declaration (other than those, if any, concerning a consent or approval to be given by a Mortgagee, in the event a Mortgagee's failure to give same is wrongful). No amendment to this Declaration shall in any way affect the rights of any Mortgagee interested under a Mortgage which is in effect at the time of the amendment concerned or the rights of any successor in interest or title to such Mortgagee, either before or after such Mortgagee or its successor enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu thereof, unless such Mortgagee has consented in writing to such amendment.

**9.02 Preservation of Common Area.** The Common Areas shall remain substantially of the same character, type and configuration as when such Common Areas became part of the Development. Unless the Association shall receive the prior written approval of (a) all first Mortgagees of Lots and (b) two-thirds (2/3) of the Owners of all Lots, the Association shall not be entitled by act or omission to abandon, partition, subdivide, encumber, sell, transfer or materially modify the Common Areas, except to grant reasonable easements for utilities and similar or related purposes.

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

- (a) there is any material default by the Owner of the Lot subject to the Mortgage in performance of any obligation under this Declaration or the Articles of the Association which is not cured within 60 days after default occurs; or
- (b) damage to the Common Areas from any one occurrence exceeds \$10,000.00; or
- (c) there is any condemnation or taking by eminent domain of any material portion of the Common Areas.

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

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

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

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

**9.08 Construction.** In the event another provision or clause of this Declaration deals with the same subject matter as is dealt with in any provision or clause of this Article IX, the provision or clause

which results in the greatest protection and security for a Mortgagee shall control the rights, obligations, or limits of authority, as the case may be, applicable to the Association with respect to the subject concerned.

**ARTICLE X**

**PARTY WALLS**

**10.01 General Rules of Law to Apply.** Each wall to be built as a part of the original construction of the Units and placed substantially on a dividing line between Lots shall constitute a party wall and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for damage due to negligence or willful acts or omissions shall apply thereto.

**10.02 Sharing of Repair and Maintenance.** 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.

**10.03 Destruction by Fire or Other Casualty.** 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 Owner of another Lot thereafter makes use of the wall, such other Owner shall contribute to the cost of restoration thereof in proportion to such use. The foregoing provision shall not prejudice, however, the right of any Owner to call for a larger contribution from another Owner under any rule of law regarding liability for negligent or willful acts or omissions.

**10.04 Weatherproofing.** Notwithstanding any other provision of this Article X, an Owner who by his negligent or willful act causes a party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

**10.05 Right to Contribution Runs with Land.** The right of any Owner to contribution from any other Owner under this Article X shall be appurtenant to the land and shall pass to such Owner's successors in title.

**ASSOCIATION BYLAWS**

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

**ARTICLE XI**

**BYLAWS**

**MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

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

automatically cease and the successor Owner shall become a member. Membership in the Association shall be mandatory, shall be appurtenant to and may not be separated from the ownership of a Lot.

**11.02 Voting Rights.** The Association shall have one class of voting memberships. There shall be one vote for each Lot in the Development, a total of 120 votes; provided that those who own Lots must be in good standing in the Association and current in all their obligations, including the payment of all assessments and other charges as set forth in this Declaration.

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

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

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

**11.06 Annual Meetings.** Annual meetings of the membership of the Association shall be held in the month of October of each year beginning in the year 2000 on such day and time as is set forth in the notice therefor; provided, that after the first such annual meeting, a month other than October may be chosen if it is deemed by the membership to be more convenient. At such annual meetings there shall be elected trustees of the Board, as needed, pursuant to the provisions of this Declaration. Financial and budget reports shall also be presented at such meetings as well as other business of the Association properly placed before each meeting.

**11.07 Special Meetings.** The President shall call a special meeting of the Owners as directed by a resolution of the Board or on a petition signed by Owners holding at least thirty percent (30%) of the total votes of the Association and having been presented to the Secretary. No business shall be transacted at a special meeting except as stated in the notice therefor unless consented to by fifty percent (50%) or more of the Owners present, either in person or by proxy.

**11.08 Notice of Meetings.** The Secretary shall mail a notice of each annual or special meeting stating the purpose thereof as well as the time and place of the meeting to each Owner of record at least 10, but not more than 30, days prior to such meeting. The mailing of notice by prepaid U.S. Mail or by delivery in person shall be considered notice served.

**11.09 Quorum.** Except as provided in Section 13.08, Owners present in person or by proxy at any membership meeting duly called pursuant to notice shall constitute a quorum at all meetings, both annual and special; provided, however, that such Owners collectively be entitled to cast at least fifty percent (50%) of the total Association votes eligible to vote.

**11.10 Adjourned Meetings.** If any meeting of Owners cannot be organized because a quorum is not present, the Owners who are present either in person or by proxy may adjourn the meeting to a time not less than 48 hours from the time the original meeting was called at which time the requirements for a quorum shall be reduced by one-half that required in Section 11.09.

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

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

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

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

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

**11.12 Board of Trustees: Declarant Control.** Declarant alone shall have the right to select the initial Board of Trustees which shall be composed of not less than three Trustees, none of whom need be Owners. Such right of the Declarant to appoint the Board shall remain in Declarant until (1) the expiration of three years after the effective date hereof; or (2) the Declarant's ownership of Lots in the Development has been reduced to 10% of the total of all Lots or (3) until Declarant waives the right to appoint the Board and requests elections pursuant to Section 11.13, whichever of the three events shall first occur.

**11.13 Board of Trustees: Owner Control; Composition, Election, Vacancies.** Subject to the provisions of Section 11.12, the Board shall be composed of from three to nine Trustees, each of whom shall be an Owner (or an officer, director, or agent of a non-individual Owner). At the first meeting of Owners to elect a Board of Trustees one-third (1/3) shall be elected to a three-year term, one-third (1/3) to a two-

year term, and one-third (1/3) to a one-year term. As Trustees' terms expire, new Trustees shall be elected for three-year terms and shall serve on the Board until their successors are elected. Vacancies on the Board shall be filled by the remaining Trustees from among the Owners and such appointees shall serve until the next annual meeting of Owners when their successors shall be elected for the unexpired term of the Trustee they were appointed to replace.

**11.14 Indemnification of Board.** Each of the Trustees shall be indemnified and held harmless by the Lot Owners against all costs, expenses, and liabilities whatsoever (excluding fraudulent and/or criminal actions) including, without limitation, attorneys fees reasonably incurred in connection with any proceeding in which such Trustee may become involved by reason of being or having been a member of said Board.

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

## ARTICLE XII

### BYLAWS

#### DUTIES AND POWERS OF THE ASSOCIATION

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

- (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, as provided herein, provided the same pertains to the Development and is free and clear of liens and encumbrances.
- (c) The Association shall maintain, repair, replace and landscape the Common Areas.
- (d) In connection with its duties to maintain and repair Common Areas, the Association will provide maintenance and repair upon the exterior surfaces and roofs of the Units (and/or the buildings in which such Units exist) deemed to be Limited Common Area, painting, replacing, and caring for roofs, gutters, downspouts, exterior surfaces, window casings and trim and other exterior improvements, including fencing, **except glass surfaces**, which the Board may deem necessary to require uniform appearance or maintenance; provided, however, that as to Original Units the costs for roof or fence repair or replacement shall be borne by the Owner or Owners of such Original Units until the same have been fully replaced once. Thereafter, all Units whether Original Units



or those constructed more recently by Declarant, shall be treated equally as provided in this Section 12.01(d).

(e) To the extent not assessed to or paid by the Owners directly, the Association shall pay all real property taxes and assessments levied upon any portion of the Common Areas, provided that the Association shall have the right to contest or compromise any such taxes or assessments.

(f) The Association shall obtain and maintain in force the policies of insurance required of it by the provisions of the Declaration.

(g) The Association may employ a responsible corporation, partnership, firm, person or other entity as the Managing Agent to manage and control the Common Areas, subject at all times to direction by the Board, with such administrative functions and powers as shall be delegated to the Managing Agent by the Board. The compensation of the Managing Agent shall be reasonable as specified by the Board. Any agreement appointing a Managing Agent shall be terminable by either party, with or without cause and without payment of any termination fee, upon 30 days' written notice thereof; and the term of any such agreement may not exceed one year, renewable by agreement of the parties for successive periods of one year each. Any Managing Agent may be an agent or employee of the Association or an independent contractor, as the Board deems appropriate.

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

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

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

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

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

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

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

(v) fire, police and such other protection services as the Board may deem desirable for the benefit of the Owners or the Development as a whole; and

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

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

**12.04 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, any committee of the Board, or the Managing Agent.

### **ARTICLE XIII**

#### **BYLAWS**

#### **ASSESSMENTS**

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

**13.02 Purpose of Assessments.** Assessments levied by the Association shall be used exclusively for the purpose of promoting the Development, the interests of the Owners therein, paying costs properly incurred by the Association, and the maintenance, operation and carrying of the Common Areas. The use made by the Association of funds obtained from assessments may include, but shall not be limited to, payment of the cost of: taxes ( if any) and insurance on the Common Areas and Units under any Board

approved blanket coverage; maintenance, repair, and improvement of the Common Areas; master metered utilities billed to the Association; payment of basic coverage cable TV pursuant to an approved plan providing coverage availability to each Unit; establishment and funding of a reserve to cover major repair or replacement of improvements within the Common Areas; and any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions or purposes under the Declaration or its Articles of Incorporation, Bylaws or Rules and Regulations.

**13.03 Annual Assessments.** Annual assessments shall be computed and assessed against all Lots in the Development based upon advance estimates of the Association's cash requirements to provide for payment of the costs enumerated in Section 13.02, above.

**13.04 Annual Budget.** Annual assessments shall be determined on the basis of a fiscal year beginning January 1 and ending December 31 next following. On or before December 15 of each fiscal year the Association shall prepare and furnish to each Owner an operating budget for the upcoming fiscal year. The budget shall itemize the estimated cash requirements for such fiscal year, anticipated receipts, reserves, and any deficit or surplus from the prior operating period. The budget shall serve as the supporting document for the annual assessments for the upcoming fiscal year and as the major guideline under which the Development shall be operated during such annual period.

**13.05 Notice and Payment of Annual Assessments.** The Association shall notify each Owner as to the amount of the annual assessment against his Lot on or before December 15 of the year preceding the year for which such annual assessment is made. Each annual assessment shall be payable in 12 equal monthly installments, one such installment due on the first day of each calendar month during the fiscal year to which the assessment relates. The failure of the Association to give timely notice of any annual assessment as provided herein shall not be deemed a waiver or modification in any respect of the provisions of the Declaration, or a release of any Owner from the obligation to pay such assessment or any other assessment; but the date when the payment shall become due in such case shall be deferred to a date 15 days after notice of such assessment shall have been given to the Owner in the manner provided in the Declaration.

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

**13.07 Maximum Annual Assessment.** The maximum annual assessment for any calendar year as established and noticed by the Board pursuant to Section 13.04 and 13.05 may be increased by the Board for the following calendar year by not more than twenty percent (20%) above the maximum annual assessment for the previous year without the vote of Owners entitled to cast a majority of the Association votes.

**13.08 Special Assessments.** The Association may levy special assessments for the purpose of defraying, in whole or in part: (a) any expense or expenses not reasonably capable of being fully paid with funds generated by annual assessments; or (b) the cost of any construction, reconstruction, or unexpectedly required addition to or replacement of the Common Areas. Any such special assessment shall be apportioned among and assessed to all Lots in the same manner as annual assessments. Such special assessments must be assented to by a majority of the votes of the membership which Owners present in person or represented by proxy are entitled to cast at a meeting duly called for such purpose and at which

a quorum is present. Written notice setting forth the purpose of such meeting shall be sent to all Owners at least 10 but not more than 30 days prior to the meeting date.

**13.09 Uniform Rate of Assessment.** All annual and special assessments authorized by Sections 13.03 and 13.08, respectively, shall be fixed at a uniform rate for all Lots within the same classification, i.e., Lots upon which Original Units exist (with separate water meters billed to the Owners) and all other Lots (with shared water meters billed to the Association); provided, however, that until a Lot has been both fully improved with a Unit and conveyed for the first time for residential purposes to a third party Lot Owner, the monthly and special assessments applicable to such Lot shall not be due and payable. Declarant shall not be denied its voting rights under Section 11.02 based on this provision. However, Declarant shall commence the payment of assessments on Units owned by it if rented to third party tenants. During the period of time that Declarant controls the Association, if assessed fees collected by the Association fail to adequately meet Association expenses, then Declarant shall pay only shortfall.

**13.10 Quorum Requirements.** The quorum at any Association meeting required for any action authorized by Section 13.08, shall be as follows: At the first meeting called, the presence of Owners or proxies entitled to cast sixty (60%) of the total votes of the membership shall constitute a quorum. If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called (subject to the notice requirements set forth in Section 13.08) 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 45 days nor less than 48 hours following the immediately preceding meeting.

**13.11 Reimbursement Assessment on Specific Lot.** In addition to the annual assessment and any special assessment authorized pursuant to Sections 13.03 and 13.08, the Board may levy at any time Reimbursement Assessments (a) on any Lot especially benefitted (i.e., benefitted to a substantially greater degree than any other Lot) by any improvement to adjacent roads, sidewalks, planting areas or other portions of the Common Areas made on the written request of the Owner of the Lot to be charged; (b) on any Lot the Owner or occupant of which shall cause any damage to the Common Areas necessitating repairs; and (c) on any Lot as to which the Association shall incur any expense for maintenance or repair work performed, or enforcement action taken, pursuant to any of the provisions of the Declaration. The aggregate amount of any such Reimbursement Assessment shall be determined by the cost of such improvements, repairs, maintenance or enforcement action, including all overhead and administrative costs, and all attorney's fees and costs, and shall be allocated among the affected Lots according to the magnitude of special benefit or cause of damage or maintenance or repair work or enforcement action, as the case may be, and such assessment may be made in advance of the performance of work. If a special benefit arises from any improvement which is part of the general maintenance or operation obligations of the Association, it shall not give rise to a Reimbursement Assessment against the Lots benefitted.

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

**13.13 Effect of Nonpayment; Remedies.** Any assessment (whether annual, special or Reimbursement Assessment) not received within 10 days of the date on which it becomes due shall be subject to a late charge equal to five percent (5%) thereof, which together with interest and costs of collection shall be, constitute, and remain a continuing lien on the affected Lot until paid. If any assessment is not received within 10 days after the date on which it becomes due, the amount thereof shall also bear interest from the

due date at the rate of one percent (1%) per month; and the Association may bring an action against the Owner who is personally liable therefor or may proceed to file and foreclose its lien against the Lot, or both. Any judgment obtained by the Association in connection with the collection of delinquent assessments and related charges shall include reasonable attorney's fees, court costs and every other expense incurred by the Association in enforcing its rights.

**13.14 Subordination of Lien to First Mortgages.** The lien of the assessments provided herein shall be subordinate to the lien of any first Mortgage given in the first instance to a bank, savings and loan association, insurance company or other institutional lender; and the holder of any such Mortgage or purchaser who comes into possession of or becomes the Owner of a Lot by virtue of the foreclosure of such first Mortgage or the exercise of a power of sale under such first Mortgage, or by deed in lieu of foreclosure, shall take free of such assessment lien as to any assessment installment which accrues or becomes due prior to the time such holder or purchaser comes into possession or ownership of such Lot; provided, that to the extent there are any proceeds of the sale on foreclosure of such first Mortgage or by exercise of such power of sale in excess of all amounts necessary to satisfy all indebtedness secured by and owed to the holder of such first Mortgage, the lien shall apply to such excess. No sale or transfer of a Lot in connection with any foreclosure of a first Mortgage shall relieve any Lot from the lien of any assessment installment thereafter becoming due.

**13.15 No Abatement.** No diminution or abatement of any assessments due pursuant to the Declaration shall be claimed or allowed for inconvenience, annoyance or discomfort arising from (a) any construction (or lack of construction) within the Development; (b) the making of (or failure to make) any repairs or improvements to or the maintenance of any Common Areas of the Development, or any part thereof; or (c) from any action taken to comply with the provisions of the Declaration or with the laws, ordinances, regulations, rules, or orders of any governmental authority.

## ARTICLE XIV

### MISCELLANEOUS

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

**14.02 Amendment.** The vote of Owners (including Declarant) who collectively hold at least sixty percent (60%) of the total outstanding votes in the Association shall be required to amend this Declaration (including the Association Bylaws set forth herein). Any amendment so authorized shall be accomplished through the recordation of an instrument executed by the Association's President (or Vice President) and Secretary wherein they certify that the vote required for amendment has occurred and that a written record thereof exists in the Association records. In addition, such right of amendment shall be subject to the following qualification: no amendment to any provision of this Declaration which has the effect of diminishing or impairing any right, power, authority, privilege, protection, or control accorded to Declarant

(in its capacity as Declarant), or to a Mortgagee or to the Association shall be accomplished or effective unless the instrument through which such amendment is purported to be accomplished is consented to in writing by Declarant, the Association or by such Mortgagee, as the case may be.

**14.03 Consent in Lieu of Vote.** In any case in which this Declaration requires for authorization or approval of a transaction the assent or affirmative vote of a stated percentage or number of votes outstanding in the Association or of the Owners, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Owners entitled to cast at least the stated percentage or number of all membership votes then outstanding in the Association, unless a higher percentage or a greater number is required by law. The following additional provisions shall govern any application of this Section 14.03:

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

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

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

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

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

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

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

**14.07 Covenants to Run with Land.** This Declaration and all the provisions hereof shall constitute covenants running with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Declarant, all parties who heretofore acquired or hereafter acquire any interest in a Lot, their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or occupant of a Lot or Unit shall comply with, and all interests in all Lots or in the Common Areas shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, and determinations contemplated by this Declaration. By acquiring

any interest in a Lot or Unit, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

**14.08 Enforcement of Restrictions.** Any Owner, the Association, or any Mortgagee shall have the right to exercise or seek any remedy at law or in equity to interpret, to enforce compliance with or to obtain redress for any violation of the provisions of this Declaration, including the Association Bylaws as set forth herein. The prevailing party in an action for the interpretation of, the enforcement of or to obtain redress for violation of any provisions of this Declaration shall be entitled to collect court costs and reasonable attorney's fees.

**14.09 Duration/Termination.** This Declaration shall remain in effect until such time as there is recorded in Utah County, Utah, an instrument of termination which is executed by Owners of at least eighty percent (80%) of the total Association votes outstanding, plus the Mortgagee of each and every Lot.

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

EXECUTED by Declarant and the Consenting Owners of Lots who together comprise not less than 90% of the total Lot Owners within the Development as set forth on the Signature Page(s) hereto. The Signature Pages may be executed in any number of counterparts which, taken together, shall constitute an original set thereof.

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**CONSENTING OWNERS**

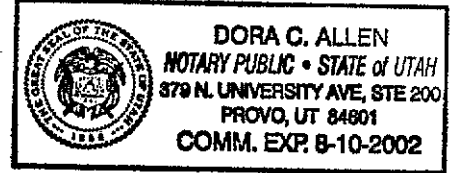
**DATE**

**LOT NUMBER(S)**

David L. Broadbent <sup>5-2-00</sup> Lynda C. Broadbent  
David L. Broadbent Lynda C. Broadbent

2000 Lot 1A

STATE OF UTAH )  
:SS  
COUNTY OF UTAH)



Acknowledged before me this 2nd day of MAY, 2000, by David L. Broadbent and Lynda C. Broadbent.

Dora C. Allen  
NOTARY PUBLIC

Cortney S. Brewerton Ilena E. Brewerton 2000 Lot 1B

STATE OF UTAH )  
:SS  
COUNTY OF UTAH)

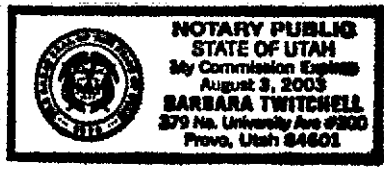
Acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2000, by Cortney S. Brewerton and Ilena E. Brewerton.

NOTARY PUBLIC

Jeffery Clair Peirce Trustee  
Jeffery Clair Peirce, Trustee  
The Pamela Allgood Trust

May 12, 2000 Lot 1C

STATE OF UTAH )  
:SS  
COUNTY OF UTAH)



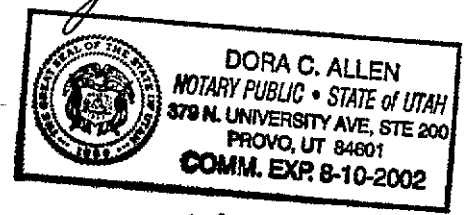
Acknowledged before me this 12 day of May, 2000, by Jeffery Clair Peirce in the representative capacity indicated.

Barbara Twitchell  
NOTARY PUBLIC

Charlotte A. Hankins  
Charlotte A. Hankins

May 2, 2000 Lot 1D

STATE OF UTAH )  
:SS  
COUNTY OF UTAH)



Acknowledged before me this 2nd day of MAY, 2000, by Charlotte A. Hankins.

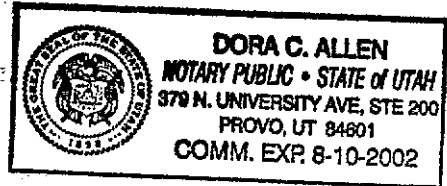
Dora C. Allen  
NOTARY PUBLIC

STATE OF UTAH, County of UTAH) ss:

On this date May 8, 2000, personally appeared before me Lynna C. Broadbent the signer(s) of the within instrument, who duly acknowledged to me that She executed the same.

Dora C Allen  
NOTARY PUBLIC

My commission expires: 8-10-2002  
Residing in: PROVO, UTAH



CONSENTING OWNERS

DATE

LOT NUMBER(S)

Kenneth L. Johnson Shirley A. Johnson, 2000 Lot 2A

STATE OF UTAH )  
                          :SS  
COUNTY OF UTAH)

Acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2000, by Kenneth L. Johnson and Shirley A. Johnson.

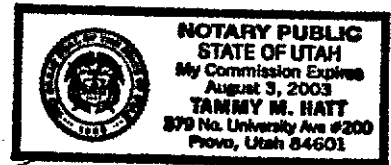
\_\_\_\_\_  
NOTARY PUBLIC

[Signature]  
David B. Clegg

15 May, 2000 Lot 2B

STATE OF UTAH )  
                          :SS  
COUNTY OF UTAH)

Acknowledged before me this 15 day of May, 2000, by David B. Clegg.



[Signature]  
NOTARY PUBLIC

Ronald C. Mooney \_\_\_\_\_, 2000 Lot 2C

STATE OF UTAH )  
                          :SS  
COUNTY OF UTAH)

Acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2000, by Ronald C. Mooney.

\_\_\_\_\_  
NOTARY PUBLIC

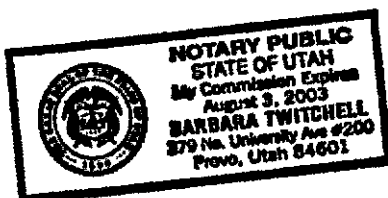
[Signature]  
Ryanne H. Owens Jonathan D. Owens

May 11, 2000 Lot 2D

STATE OF UTAH )  
                          :SS  
COUNTY OF UTAH)

Acknowledged before me this 11 day of May, 2000, by Ryanne H. Owens and Jonathan D. Owens.

[Signature]  
NOTARY PUBLIC



CONSENTING OWNERS

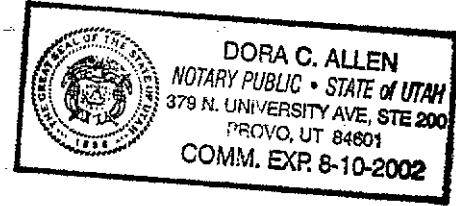
DATE

LOT NUMBER(S)

SUMMIT MANAGEMENT, L.C.

5-4, 2000 Lot 3A

By: [Signature] Manager



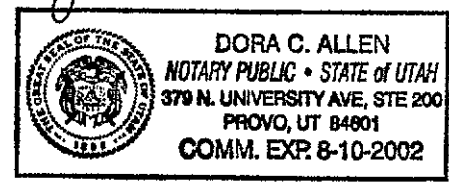
STATE OF UTAH )  
:ss  
COUNTY OF UTAH)

Acknowledged before me this 4th day of MAY, 2000, by Joan TAMMER in the representative capacity indicated.

[Signature]  
NOTARY PUBLIC

[Signature]  
Samuel D. Bernards

May 2, 2000 Lot 3B



STATE OF UTAH )  
:ss  
COUNTY OF UTAH)

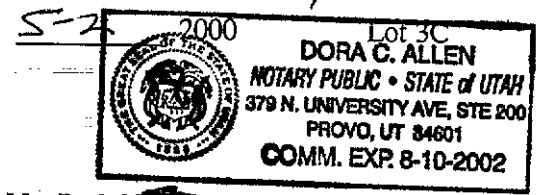
Acknowledged before me this 2nd day of May, 2000, by Samuel D. Bernards.

[Signature]  
NOTARY PUBLIC

[Signature]  
Foustina Mae Buckel

[Signature]  
Deloy Griffin

[Signature]  
Janene C. Griffin



STATE OF UTAH )  
:ss  
COUNTY OF UTAH)

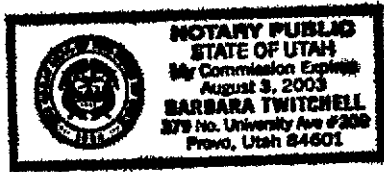
Acknowledged before me this 2d day of MAY, 2000, by Foustina Mae Buckel, D. Deloy Griffin and Janene C. Griffin.

[Signature]  
NOTARY PUBLIC

STATE OF UTAH )  
COUNTY OF UTAH ) :SS

Acknowledged before me this 13th day of May, 2000, by  
DELOY GRIFFIN and JANENE C. GRIFFIN:

*Barbara Twitchell*  
NOTARY PUBLIC



CONSENTING OWNERS


DATE LOT NUMBER(S)

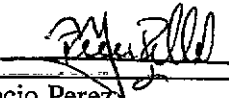
Trevor R. McKee, Trustee Marian D. McKee, Trustee  
THE MCKEE FAMILY TRUST THE MCKEE FAMILY TRUST 2000 Lot 3D

STATE OF UTAH )  
:SS  
COUNTY OF UTAH)

Acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2000, by Trevor R. McKee and Marian D. McKee in the representative capacity indicated.

NOTARY PUBLIC

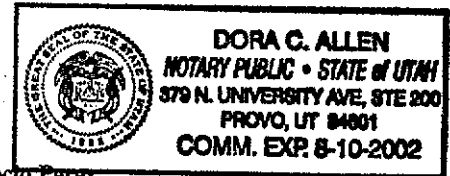
  
Gabriel Perez  
GABRIEL P.P.

  
Rocio Perez


05/02, 2000 Lot 4A


STATE OF UTAH )  
:SS  
COUNTY OF UTAH)

Acknowledged before me this 2nd day of MAY, 2000, by Marrirel Perez and Rocio Perez.



  
NOTARY PUBLIC

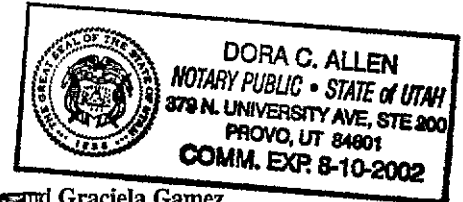
  
Gerardo Castillo

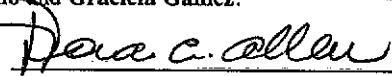
  
Graciela Gamez

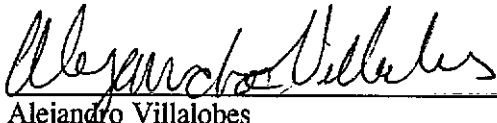
5-2-, 2000 Lot 4B

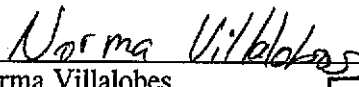
STATE OF UTAH )  
:SS  
COUNTY OF UTAH)

Acknowledged before me this 2nd day of MAY, 2000, by Gerardo Castillo and Graciela Gamez.



  
NOTARY PUBLIC

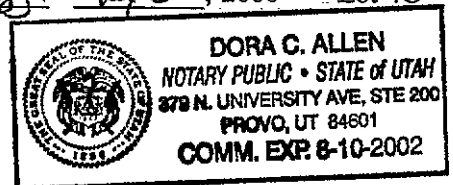
  
Alejandro Villalobos

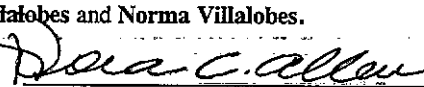
  
Norma Villalobos

May 2nd, 2000 Lot 4C

STATE OF UTAH )  
:SS  
COUNTY OF UTAH)

Acknowledged before me this 2nd day of MAY, 2000, by Alejandro Villalobos and Norma Villalobos.



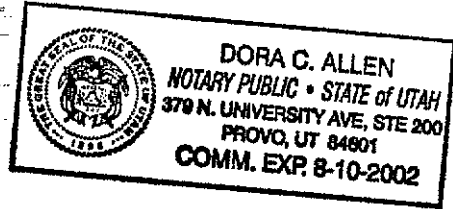
  
NOTARY PUBLIC

STATE OF UTAH, County of UTAH) ss:

On this date MAY 8 2000, personally appeared before me Herardo Castillo the signer(s) of the within instrument, who duly acknowledged to me that he executed the same.

Dora C. Allen  
NOTARY PUBLIC

My commission expires: 8-10-2002  
Residing in: PROVO, UTAH



Signatures For: Amended and Restated Declaration of Easements, Covenants, Conditions and Restrictions For Deerhaven Estates. (Including Bylaws)

**CONSENTING OWNERS**

**DATE**

**LOT NUMBER(S)**

Randy Tidwell  
Randy Tidwell

Elizabeth Tidwell  
Elizabeth Tidwell

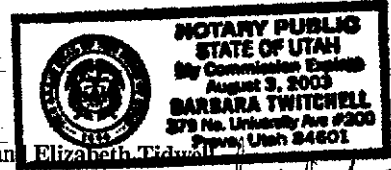
5-13-00, 2000 Lot 4D

STATE OF UTAH )

:SS

COUNTY OF UTAH)

Acknowledged before me this 13 day of may, 2000, by Randy Tidwell and Elizabeth Tidwell



Barbara Twitchell  
NOTARY PUBLIC

ENT 39561:2000 PG 32 of 38

Jose L. Garcia  
Jose L. Garcia

Maria De Lourdes Garcia  
Maria De Lourdes Garcia

, 2000 Lot 5A

STATE OF UTAH )

:SS

COUNTY OF UTAH)

Acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2000, by Jose L. Garcia and Maria De Lourdes Garcia.

NOTARY PUBLIC

Duane G. Peters  
Duane G. Peters

Dana R. Peters  
Dana R. Peters

, 2000 Lot 5B

STATE OF UTAH )

:SS

COUNTY OF UTAH)

Acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2000, by Duane G. Peters and Dana R. Peters.

NOTARY PUBLIC

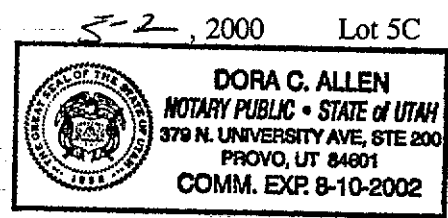
Shelby M. Ford  
Shelby M. Ford

STATE OF UTAH )

:SS

COUNTY OF UTAH)

Acknowledged before me this 2nd day of MAY, 2000, by Shelby M. Ford.



5-2, 2000 Lot 5C

Dora C. Allen  
NOTARY PUBLIC

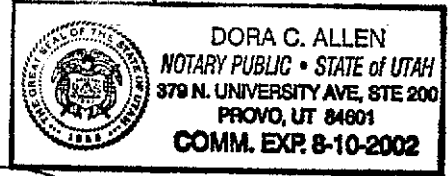


**CONSENTING OWNERS**

**DATE** \_\_\_\_\_ **LOT NUMBER(S)** \_\_\_\_\_

Kay L. Morris \_\_\_\_\_ May 8, 2000 Lot 5D  
Kay L. Morris

STATE OF UTAH )  
COUNTY OF UTAH) :SS

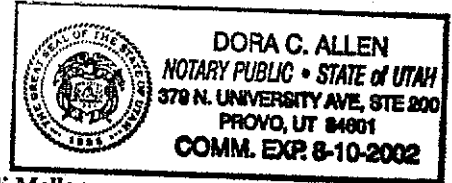


Acknowledged before me this 8th day of May, 2000, by Kay L. Morris.

Dora C. Allen  
NOTARY PUBLIC

Anthony J. Molloy \_\_\_\_\_ Jodi Molloy \_\_\_\_\_ 5/2, 2000 Lot 6A  
Anthony J. Molloy Jodi Molloy

STATE OF UTAH )  
COUNTY OF UTAH) :SS

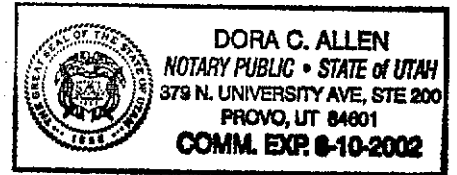


Acknowledged before me this 2nd day of May, 2000, by Anthony J. Molloy and Jodi Molloy.

Dora C. Allen  
NOTARY PUBLIC

Jeffrey S. McClellan \_\_\_\_\_ \_\_\_\_\_ 5/2, 2000 Lot 6B  
Jeffrey S. McClellan

STATE OF UTAH )  
COUNTY OF UTAH) :SS

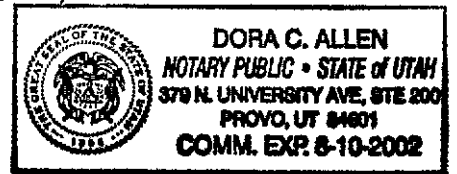


Acknowledged before me this 2nd day of MAY, 2000, by Jeffrey S. McClellan.

Dora C. Allen  
NOTARY PUBLIC

Alicia A. Keller \_\_\_\_\_ Wendy G. Keller \_\_\_\_\_ 5/2, 2000 Lot 6C  
Alicia A. Keller Wendy G. Keller

STATE OF UTAH )  
COUNTY OF UTAH) :SS



Acknowledged before me this 2nd day of MAY, 2000, by Alicia A. Keller and Wendy G. Keller.

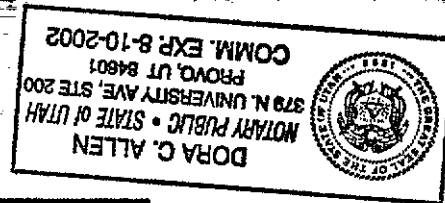
Dora C. Allen  
NOTARY PUBLIC

STATE OF UTAH, County of UTAH) ss:

On this date MAY 9<sup>th</sup>, 2000, personally appeared before me Alicia A. Keller the signer(s) of the within instrument, who duly acknowledged to me that She executed the same.

Dora C. Allen  
NOTARY PUBLIC

My commission expires: 8-10-2002  
Residing in: PROVO, UTAH



CONSENTING OWNERS

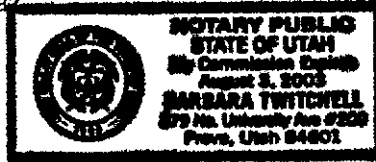
\_\_\_\_\_  
DATE LOT  
NUMBER(S)

[Signature]  
Hugo R. Diaz

[Signature]  
Mirtha Diaz

May 11, 2000 Lot 6D

STATE OF UTAH )  
                          :SS  
COUNTY OF UTAH)



Acknowledged before me this 11 day of May, 2000, by Hugo R. Diaz and Mirtha Diaz.

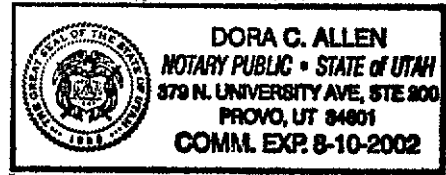
[Signature]  
NOTARY PUBLIC

[Signature]  
Stephen R. Adams

[Signature]  
Holly M. Adams

s/z, 2000 Lot 9A

STATE OF UTAH )  
                          :SS  
COUNTY OF UTAH)



Acknowledged before me this 2nd day of MAY, 2000, by Stephen R. Adams and Holly M. Adams.

[Signature]  
NOTARY PUBLIC

\_\_\_\_\_  
Frank E. Hill Gloria Hill, 2000 Lot 9B

STATE OF UTAH )  
                          :SS  
COUNTY OF UTAH)

Acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2000, by Frank E. Hill and Gloria Hill.

\_\_\_\_\_  
NOTARY PUBLIC

CONSENTING OWNERS

DATE

LOT  
NUMBER(S)

\_\_\_\_\_, 2000 Lot 13A  
H. Clifton Conrad Susan W. Conrad

STATE OF UTAH )  
                  :SS  
COUNTY OF UTAH)

Acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2000, by H. Clifton Conrad and Susan W. Conrad.

\_\_\_\_\_  
NOTARY PUBLIC

\_\_\_\_\_, 2000 Lot 14D  
Ethan Andrew Willis Ashley Brooke Peterson Willis

STATE OF UTAH )  
                  :SS  
COUNTY OF UTAH)

Acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2000, by Ethan Andrew Willis and Ashley Brooke Peterson Willis.

\_\_\_\_\_  
NOTARY PUBLIC

\_\_\_\_\_, 2000 Lot 15A  
Erin Rae Goldston

STATE OF UTAH )  
                  :SS  
COUNTY OF UTAH)

Acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2000, by Erin Rae Goldston.

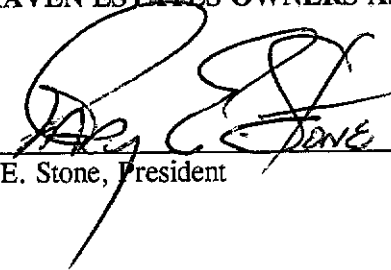
\_\_\_\_\_  
NOTARY PUBLIC



Deerhaven Estates Owners Association, a Utah nonprofit corporation, incorporated for the purpose of owning, maintaining and administering the Common Areas of Deerhaven Estates Planned Unit Development, Provo, Utah, hereby approves the above Amended and Restated Declaration of Easements, Covenants, Conditions and Restrictions (Including Association Bylaws) and consents to the recordation thereof with the Utah County Recorder, Provo, Utah.

Dated: May 17<sup>th</sup>, 2000

**DEERHAVEN ESTATES OWNERS ASSOCIATION**

By  \_\_\_\_\_  
Gary E. Stone, President