

DECLARATION OF EASEMENTS, COVENANTS,  
CONDITIONS AND RESTRICTIONS

for  
Hillsdale

A PLANNED UNIT DEVELOPMENT

THIS DECLARATION (hereinafter the "Declaration") is made and executed this 11<sup>th</sup> day of July, 1995, by North Ridge Company, a Utah Corporation, (hereinafter the "Declarant"), in its capacity as the owner of the below described real property and as the developer of Hillsdale, a Planned Unit Development, Provo, Utah, (hereinafter the "Project").

RECITALS:

WHEREAS, Declarant is the owner of certain real property in Utah County, Utah, and more particularly described as:

(See Exhibit "A")

(the "real property"); and

ENT 45910 BK 3722 PG 471  
RANDALL A. COVINGTON  
UTAH COUNTY RECORDER  
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WHEREAS, Declarant intends to develop the real property as a residential planned development known and to be known as **Hillsdale** (the "project"); and

WHEREAS, Declarant desires to provide for the preservation of values and amenities within the project and for the maintenance of roadways, open spaces, recreational facilities and any other common areas or facilities to be developed as part of the Project; and to this end desires to subject the obligations, servitude, easements, charges, liens and other provisions (herein all together called "covenants and restrictions") set forth in this Declaration, each and all of which is and are for the benefit of the real property and the subsequent owners thereof; and

WHEREAS, Declarant has deemed it desirable for the efficient preservation of the values and amenities in the Project to create an Association to which will be conveyed title to all of the Common Areas and to which will be delegated and assigned the powers and duties of maintaining and administering the Common Areas, administering and enforcing the provisions of this Declaration, and disbursing the charges and assessments herein created; and

WHEREAS, Declarant has caused to be formed **Hillsdale Homeowners Association, Inc.** a Utah non-profit corporation without capital stock (the "Association") for the purposes of carrying out the aforesaid powers, duties and obligations;

NOW, THEREFORE, Declarant hereby declares that the real property is and shall be held, conveyed, hypothecated or encumbered, sold, leased, rented, used, occupied and improved subject to the

covenants and restrictions hereinafter set forth, all of which, as declared and agreed shall be an aid of the Project's plan of development; shall protect the value of the real property and the improvements comprising the Project; shall run with and bind the real property and all persons having any right, title or interest therein, their heirs, successors and assigns; and shall inure to the benefit of and be enforceable by Declarant, its successors and assigns, the Association, and any person owning or acquiring an interest in the real property.

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## ARTICLE I

### DEFINITIONS

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

- 1.01 Assessment shall mean the amount which is to be levied and assessed against each Lot and paid by each Owner to the Association for Association expenses.
- 1.02 Association shall mean **THE HILLSDALE HOMEOWNERS ASSOCIATION**, a Utah non-profit corporation, and its successors and assigns.
- 1.03 Articles shall mean and refer to the Articles of Incorporation of the Association, which are or shall be filed in the Office of the Secretary of the State of Utah, as amended from time to time.
- 1.04 Bylaws shall mean the Bylaws of the Association, as amended from time to time.
- 1.05 Board shall mean the Board of Trustees of the Association.
- 1.06 Common Areas shall mean all portions of the Development except those areas of the lots not designated as Common Area, and shall include all property owned by the Association for the common use and enjoyment of the Owners such as all common recreation facilities, undedicated roads or streets, open spaces, structural common areas and the like, together with all easements appurtenant thereto.
- 1.07 Declarant shall mean **North Ridge Company**, A Utah Corporation, and its successors and assigns, if any, as developers of the Project.
- 1.08 Declaration shall mean this Declaration of Covenants, Conditions and Restrictions of the **Hillsdale** development.
- 1.09 Development shall mean **Hillsdale** as it exists at any given time.
- 1.10 Living Unit shall mean a structure which is designed and intended for use and occupancy as a single-family residence, together with all improvements located on the same lot and used

in conjunction with such residence.

- 1.11 Lot shall mean and refer to any of the separately numbered and individually described parcels of land within the Project or Property as designated on the Plat, designed and intended for improvement with a living Unit.
- 1.12 Managing Agent shall mean any person, independent contractor or entity appointed, contracted with, or employed as Managing Agent by the Association.
- 1.13 Mortgage shall mean any recorded mortgage or deed of trust encumbering a lot; and Mortgagee shall mean any mortgagee under a mortgage or a beneficiary of a Deed of Trust.
- 1.14 Owner shall mean any person or entity, including the Declarant, who is the owner of record (as reflected by the records in the office of the County Recorder of Utah County, Utah) or the contract purchaser of a fee or undivided fee interest in a Lot, which is a part of the Development. Notwithstanding any applicable theory relating to mortgages, no Mortgagee 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. If more than one person or entity shall be the Owner of a particular Lot, then all of such persons or entities shall be jointly and severally liable for all obligations and responsibilities of an Owner hereunder.
- 1.15 Plat shall mean and refer to the Plat of the planned unit subdivision of the North Ridge Estates designated as Hillsdale, at the outset hereof initially creating Common Areas and 19 Lots, as the same may be amended or supplemented.
- 1.16 Property shall mean all land covered by this Declaration, including Common Areas and Lots and other land annexed to the Property, as provided in the Declaration, including all easements, rights and appurtenances belonging thereto. The initial Property shall consist of the land described in Exhibit "A".
- 1.17 Reimbursement Assessment shall mean a charge against a particular owner and his Lot for the purpose of reimbursing the Association for costs incurred in bringing the Owner and his Lot into compliance with the provisions of the Declaration, the Articles, Bylaws, 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.

## ARTICLE II

**SUBMISSION OF PROPERTY AND RESERVATION OF RIGHTS**

- 2.01 Submission of Property. The Declarant hereby submits and subjects the real property located in Provo, Utah County, Utah and more particularly described on Exhibit A, attached hereto and by reference incorporated herein, the improvements, all easements, rights and appurtenances, and all other Property, as defined herein, to the provisions of this Declaration and declares that all such real property, improvements, easements, rights, appurtenances and other Property are and shall be held, possessed, occupied, used, lease, encumbered, transferred, sold, conveyed, devised and inherited subject to the provisions of this Declaration.
- 2.02 Reservation of Rights in Property. Declarant reserves, however, such easements and rights of ingress and egress over, across, through and under the above described real property and any improvements (including buildings or Units) now or hereafter constructed thereon as may be reasonably necessary for Declarant (a) to construct and complete each of the buildings and Units and all of the other improvements, structures, utilities and facilities described in this Declaration or in the Plat recorded concurrently herewith or which shall hereafter be recorded and all other things reasonably necessary in connection therewith; and (b) to construct and complete on the Property, or any portions thereof, such other improvements, structures, facilities or landscaping designed for the use and enjoyment of the Owners as Declarant may reasonably deem necessary or appropriate. With the exception of any easements described in Section 4.00, this reservation shall, unless sooner terminated in accordance with the terms hereof, expire ten (10) years after the date on which this Declaration is filed for record with the County Recorder of Utah County.
- 2.03 Covenants to Run with Land. This Declaration and all the provisions hereof are declared to be and shall constitute covenants which run with the land or equitable servitudes and shall be binding upon and inure to the benefit of Declarant and any and all parties who have acquired or hereafter acquire any interest in a Lot or in the Common Areas, their respective grantees, transferees, mortgagees, tenants, heirs, devisees, personal representatives, successors and assigns. Each present and future Owner, Mortgagee, tenant, or occupant of a Lot or Unit shall be subject to and shall comply with the provisions of this Declaration and the provisions of any rules and regulations contemplated by this Declaration. Each party acquiring any interest in a Lot or Unit thereby consents to and agrees to be bound by all of the provisions of this Declaration.

### ARTICLE III

#### BUILDINGS AND IMPROVEMENTS

- 3.01 Buildings and Improvements. The improvements that are to be constructed on the common areas of the development are described on the Plat. The Project consists generally of nineteen (19) residential building Lots as shown on the Plat, and all common areas, including the canal as shown on the Plat.
- 3.02 Description of Lots. The Plat contains the Lot number, location, and dimensions of each Lot in the Project and all other information necessary to identify each such Lot.
- 3.03 Description of Common Areas. The Plat contains a description of the Common Areas of the Project.
- 3.04 Description of Limited Common Areas. The Plat contains a description of the Limited Common Areas, if any exist, of the Project. The Limited Common Areas are identified on the Plat with the same numbers or other designations as the Lots. Each Limited Common Area that is designated as part of or appurtenant to a particular lot, is reserved for the exclusive use of, and may not be severed from the Lot bearing the same number or other designation.

### ARTICLE IV

#### NATURE AND INCIDENTS OF OWNERSHIP, PROPERTY RIGHTS AND CONVEYANCES

- 4.01 Transfer of Title to Common Areas. Concurrent with or immediately following the filing of each Plat, Declarant shall convey to the Association title to the various Common Areas.
- 4.02 Easement for Use of Common Areas. Each Lot, for the benefit of the owner thereof shall have appurtenant thereto a non exclusive right and easement for use of the Common Areas, which shall, include, without limitation, an easement for ingress to and egress from the said Lot and the Limited Common Areas appurtenant thereto and a right of lateral support of the Unit located on a Lot. Each Lot shall have appurtenant thereto an exclusive right and easement for use of the Limited Common Areas, if any exist, designated for the exclusive use of such Lot. Any Owner 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 reside on such Owner's Lot. Notwithstanding the foregoing, no Owner shall have any right to interest in any easement forming a portion of the Common areas except for the necessary parking, access, communication, utility, drainage and sewer purposes for which such easements are intended for use in common with others. The rights and easements described herein shall pass with the title to each Lot, whether by gift, devise, inheritance, transfer, conveyance, encumbrance, or otherwise and whether or not reference is made

thereto and in no event shall such rights and easements be separated from the Lot. No Owner shall bring any action for partition of the Common Areas. The rights and easements described herein shall be for the purposes and uses set forth in this Declaration and shall be subject to such reasonable rules and regulation regarding the use of the Common Areas and Limited Common Areas as the Association shall establish. It is hereby understood that an easement for the Upper East Union Canal does exist through certain portions of the Common Areas as described on the Plat, and that if the Association does not maintain the canal to the satisfaction of the Canal Company then the Canal Company will maintain the canal as they see fit.

- 4.03 Encroachment. If any part of the Common Areas encroaches or shall hereafter encroach upon a Lot or Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Lot or Unit encroaches or shall hereafter encroach upon the Common Areas, or upon an adjoining Lot or Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. Such encroachments shall not be considered to be encumbrances either on the Common Areas or the Units. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of any building on the Property, by error in the Plat, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof.
- 4.04 Easements for Access to Common Areas. There is reserved hereby an easement of access over, across, through and under each Lot and Unit for access to all Common Areas for the purpose of maintenance, repair or replacement of any of the Common Areas located therein or accessible therefrom and for the purpose of emergency repairs to prevent damage to the Common Areas or to another Unit. Use of the easement may be exercised by the Association, or its agents, during reasonable hours and upon reasonable notice, except in an emergency in which event the notice to be given and the hours for access shall be in accordance with the circumstances. Damage to any Lot resulting from such maintenance, repair, emergency repair or replacement of any of the Common Areas or as a result of the emergency repairs on or within another Lot or Unit at the insistence of the Association shall be at the expense of the Association. However, if such damage is the result of the negligence of an Owner, then such Owner shall be financially responsible for such damage. Such damage shall be repaired and the Property shall be restored substantially to the same condition as existed prior to the damage.
- 4.05 Utility Easements. There is reserved hereby an easement for all pipes, lines, utility lines, cables, wires, optical fiber lines or other similar facilities which traverse, intersect, or underlie the Property, whether such pipes, lines, utilities and facilities are now existing or hereafter constructed and further are subject to an easement necessary for ingress to, egress from, repair, maintenance, and replacement of such pipes, lines, utility lines, cables, wires, optical fiber lines or other similar facilities.

- 4.06 Easements Deemed Created. All conveyances of Lots hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve such reciprocal easements as are provided herein, even though no specific reference to such easements appears in any such conveyance.
- 4.07 Title to Lots. Title to a Lot, consisting of a fee simple interest therein, may be held or owned by any entity and in any manner in which title to any other real property may be held or owned in the State of Utah, including, but without limitation, joint tenancy or tenancy in common.
- 4.08 Description of a Unit. Every deed, mortgage, purchase contract, lease, or other instrument, conveying, encumbering or affecting the title to a Lot shall describe that Lot by the number shown on the Plat with the appropriate reference to the Plat and to this Declaration, as each shall appear on the records of the County Recorder of Utah County, Utah, in substantially the following fashion:

Lot \_\_\_\_\_, as shown in the Plat for Hillsdale, Phase \_\_\_\_\_, recorded in the office of the County Recorder of Utah County, Utah, in Book \_\_\_\_\_, Page \_\_\_\_\_, SUBJECT TO the Declaration of Easements, Covenants, Conditions and Restrictions of Hillsdale, a Planned Unit Development, recorded in the office of the Utah County Recorder as Entry No. \_\_\_\_\_, in Book \_\_\_\_\_, at Page \_\_\_\_\_, (as the same is amended or modified) TOGETHER WITH a right and easement of use of the Common Areas as described and provided in the said Declaration and Plat described above.

Whether or not the above form is used in any such instrument, the provisions of this Declaration shall be binding upon and inure to the benefit of any party acquiring an interest in a Lot.

- 4.09 Limitation on Easement. An Owner'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 govern by rules and regulations the use of the Common Areas by the Owners so as to provide for the enjoyment of the Common Areas by every Owner in a manner consistent with the preservation of quiet enjoyment of the Lots by every Owner, including the right of the Association to impose reasonable user charges for the use of facilities (other than open areas) within the Common Areas and reasonable limitations on the number of guests per Owner who at any given time are permitted to use the Common Areas.
  - b. The right of the Association to suspend an Owner's right to the use of any amenities included in the Common Areas for any period during which an assessment on such Owner's Lot remains unpaid and for a period not exceeding ninety (90) days for any infraction by such Owner of the provisions of this Declaration or of any rule or regulation promulgated by the Board;

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

d. The right of the City of Provo, Utah, and any other governmental or quasi-governmental body having jurisdiction over the Property to enjoy access and rights of ingress and egress over and across the debris basin and along the canal right of way as noted on the recorded plat for any flood control services provided by any governmental or municipal service, or for any maintenance and repair of the canal. Declarant and landowners as well as subsequent owners of real property agree to hold Provo City harmless for all activities in relation to providing this service; and

e. 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 condition as may be agreed upon by the Association.

**ARTICLE V**

**DUTIES AND OBLIGATIONS OF OWNERS AND MEMBERS**

- 5.01 Maintenance and Repair. Each Owner shall, at his or her sole cost and expense, keep his or her Lot, including, without limitation, all improvements except for those within a designated common area, and or a limited common area, including but not limited to, landscaping, fencing, exterior walls, interior walls, roofs, windows, glass, ceilings, floors, and permanent fixtures and appurtenances thereto, in a clean, sanitary and attractive condition, and in good state of repair, shall be responsible for the maintenance, repair, or replacement of any and all improvements on his or her lot. Each Owner shall keep the Limited Common Areas if any, designed for use in connection with his or her Lot in a clean, sanitary and attractive condition.
- 5.02 Assessments. Each Owner shall be responsible for the prompt payment of any Assessments provided for in this Declaration.
- 5.03 Observation of Rules and Regulations. Each Owner shall be responsible for the observance by Owner and any guests or invitees of Owner of the rules and regulations adopted from time to time by the Association.

**ARTICLE VI**

**MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

- 6.01 Membership. Each Owner including the Declarant shall be entitled and required to be a



Member of the Association. Upon acquiring title to a Lot, an Owner shall automatically become a member of the Association, and upon ceasing to be an Owner, for any reason, an Owner's membership in the Association shall automatically cease. Each membership in the Association shall be appurtenant to and may not be separated from the Lot to which it relates.

No person or entity, other than an Owner, may be a member of the Association. Any sale, transfer, conveyance, devise, encumbrance or other disposition of a Lot shall automatically sell, transfer, convey, devise, encumber or otherwise dispose of the Owner's membership in the Association and the right and obligations appurtenant thereto.

- 6.02 Voting Rights. Each Owner, including Declarant, shall be entitled to one (1) vote as to all Association matters for each Lot owned by such Owner.
- 6.03 Multiple Owners of a Lot. 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 one (1) vote appurtenant to such Lot be cast with respect to any issue. A vote cast at any Association meeting or by written consent by any 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.
- 6.04 Record of Owners. Each Owner shall promptly notify the Association of any change of ownership, contract sale, or encumbrance of a Lot and, if requested by the Association, shall deliver to the Association a copy of any such conveyance document, sale contract or encumbrance. The Association may rely on the information from the Utah County Recorder regarding the Owners and Mortgagees of Lots.

## ARTICLE VII

### DUTIES AND POWERS OF THE ASSOCIATION

- 7.01 Initial Board of Trustees. The initial Board of Trustees of the Association shall be composed of up to five (5) but not less than three (3) Trustees, none of whom need be Owners. Declarant shall have the right to appoint the Board until the earlier of (a) the date the Declarant voluntarily waives this right, in writing, and requests the Association to elect members of the Board, (b) the date following the sale of all Lots by Declarant, or (c) the date which is ten (10) years after this Declaration is first recorded in the office of the Recorder of Utah County.
- 7.02 Board of Trustees. Subject to the provisions of Section 7.01, the Board (excluding the Initial Board) shall be composed of up to five (5) but not less than three (3) Trustees, each of whom shall be an Owner (or an officer, director, or agent of an Owner who is not an individual). The term of office of each Trustee shall be one (1) year and each Trustee shall serve until his

or her successor is elected.

7.03 Indemnification of Board. Each Trustee shall be indemnified and held harmless by the Owners against all costs, expenses, and liabilities, including, but not limited to attorneys fees, incurred in connection with any proceeding in which such Trustee may become involved by reason of being a member of the Board, except actions arising from the criminal or fraudulent actions or conduct of such Trustee.

7.04 Obligations of the Association. The Association shall have the obligation to do and perform the following for the benefit of the Owners and the maintenance and improvement of the Project.

a. The Association shall accept title to all Common Areas conveyed to it, whether by Declarant or by others.

b. The Association shall maintain, repair, replace and landscape the Common Areas and keep the same in good, clean, attractive, safe and sanitary condition, order and repair. In connection with its duties to maintain and repair Common Areas, the Association will provide maintenance and repair upon the sidewalks, streets, curb and gutter, canal and driveways designated as Common Area and required to be constructed by Provo City according to the plat hereto attached. It is hereby understood and agreed that each Lot owner shall install, repair, maintain and replace the improvements upon his Lot as necessary and required, including but not limited to landscaping. Maintenance of all improvements, including landscaping, upon each separate lot shall be the responsibility of the Owner of the Lot. If any owner shall fail to maintain his Lot, the exterior of his Living Unit and other improvements in a manner satisfactory to the Board, the Association, after a majority vote of the full Board, shall have the right, through its agents, employees or independent contractors, to enter upon such Lot and to maintain, repair, replace and landscape such Lot, exterior of his Living Unit and other improvements erected thereon. The cost of such maintenance, repair, replacement of hardscape, fencing, and landscaping shall be added to and become part of the Reimbursement Assessment to which such Lot is subject under this Declaration.

In the event that the need for maintenance or repair of a Lot or the exterior of the Living Units and other improvements thereof is caused through the willful or negligent acts of its Owner, or through the willful or negligent acts of the family, guests, or invitees of the Owner of the Lot needing such maintenance or repair, the cost of such exterior maintenance shall be added to and become part of the Reimbursement Assessment to which such Lot is subject.

c. 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.

d. The Association shall obtain and maintain in force the policies of insurance required by the provisions of this Declaration.

e. The Association may employ or engage a responsible independent contractor, corporation, partnership, firm, person or other entity as the Manager 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 terminable by either party, with or without cause and without payment of any termination fee, upon thirty (30) days written notice thereof; and the term of any such agreement may not exceed one (1) year each, renewable by agreement of the parties for successive one (1) year periods. Any Managing Agent may be an agent or employee of the Association or an independent contractor, as the Board deems appropriate.

7.05 Powers of Association. The Association shall have all the powers set forth in its Articles of Incorporation and Bylaws, all powers that have been or may hereafter be conferred by law to nonprofit corporations, all powers as may hereafter be granted to it by its members, and the power to do all things authorized, required or permitted to be done by the Association under the provisions of this Declaration, including, but not limited to the following:

- (a) The Association shall have the power to obtain, contract and pay for:
  - (i) the construction, maintenance, repair and landscaping of the Common Areas;
  - (ii) such insurance policies or bonds as may be required by this Declaration or as the Board may deem reasonable or necessary for the benefit of the Association, the Trustees and the Owners;
  - (iii) such utility services for the Common Areas as the Board may deem reasonable and necessary; and
  - (iv) such materials, supplies, equipment, furniture and other personal property and such labor and other services as the Board may deem reasonable and necessary to carry out the duties of the Association.
- (b) The Association shall have the power to levy and collect assessments as hereinafter provided.
- (c) The Association shall have the power to adopt, amend, modify, repeal, construe and enforce reasonable rules and regulations governing among other things the use of the Common Areas, including the roads and utility services, the use of the Lots and Units, and the use and enjoyment of the Property and the conduct of Owners and their guests and invitees on the Project, which rules and regulations shall be consistent with the rights and duties established in this Declaration.

- (d) The Association shall have the power, in its own name, and in 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 this Declaration or any rules and regulations promulgated by the Association, or to enforce by mandatory injunction or otherwise all of the provisions of this Declaration and such rules and regulations. The Association shall also have power to adopt bylaws or rules and regulations regarding the suspension of the rights, including voting rights, of an Owner as a member of the Association during any period of time during which the Owner fails to comply with the rules and regulations of the Association or with Owner's obligations under this Declaration.
- (e) The Association shall have the power, without liability to any Owner for trespass or damage, to enter upon any Lot or Limited Common Area for the purpose of maintaining and repairing such Lot or Limited Common Area or any improvement thereon, if for any reason the Owner fails to maintain and repair the Lot, Limited Common Area or improvement as required hereunder.
- (f) The Association shall have all other rights, powers and privileges reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

- 7.06 Grant of Easements. The Association may grant or create, on such terms as it deems advisable, easements and rights of way over, under, across, and through the Common Areas for roads, streets or other means of access for, utilities, and for such other purposes as reasonably may be necessary or useful for the proper maintenance, use and operation of the Property and the Project.
- 7.07 Governance of Association. Except as herein set forth, the Association shall be governed by its Articles of Incorporation and Bylaws, and the resolutions adopted by its members or the Board.

## ARTICLE VIII

### ASSESSMENTS

- 8.01 Agreement to Pay Assessments. The Declarant, for each Lot within the Project, and for and as the Owner of the Land and Property and every part thereof, hereby covenants that for each lot that he owns he shall pay \$1.00 per lot per month, and each Owner of any Lot by the acceptance of a deed or other instrument of conveyance and transfer therefor, whether or not it be so expressed in said deed or other instrument, shall be deemed to covenant and agree with each other Owner and with the Association to pay to the Association all assessments made by the Association for the purposes provided in this Declaration, any special

assessment for capital improvements and other matters as provided in this Declaration. Such assessments shall be fixed, established, and collected from time to time as provided in this Article VIII.

- 8.02 Annual Assessments. Annual Assessments shall be computed and assessed against all Lots in the Project based upon advance estimates of the Association's cash requirements to provide for payment of all estimated expenses arising out of or connected with the maintenance and operation of the Common Areas and Facilities, and the furnishing of utility services and other common items, if any, to the Lots. The Declarant's assessment shall not exceed that specifically set in section 8.01. Such estimated expenses may include, without limitation, the following: Expenses of management; real property taxes and special assessments on the Common Areas, real property taxes and special assessments levied by governmental authorities against the Lots of Units until the same are separately assessed; premiums for all insurance that the Association is required or permitted to maintain hereunder; common lighting, heating, water and sewer charges, trash collection, repairs and maintenance including repairs and maintenance under Section 7.05(e); wages for Association employees, including fees for a Manager (if any); legal and accounting fees; any deficit remaining from a previous period; creation of reasonable contingency reserve, major maintenance reserve, and/or surplus or sinking fund; creation of an adequate reserve fund for maintenance repairs and replacement of those Common Areas and Facilities that must be replaced on a periodic basis, where such reserve is to be funded by monthly payments rather than extraordinary special assessment; and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under or by reason of this Declaration. Such shall constitute the Common Expense, and all funds received from assessments under this Section 8.02 shall be part of the Common Expense Fund.
- 8.03 Utilities. It is acknowledged that each Lot shall be separately metered for gas, water and electricity. Costs of gas, water, sewer, garbage and electric service shall be paid by each Owner. Common area utilities shall be metered jointly for the Project. As indicated above, the Association shall pay the costs of Common Area water, sewer and garbage, if any, as part of the Common Expense. Owners are hereby advised that failure of the Association to pay water, sewer, and garbage bills may result in loss of such service to Common Areas.
- 8.04 Date of Assessment. The Common Expenses shall be apportioned and assessed to all Owners at a rate which shall be in proportion to the number of Lots in the Project and according to the budget amounts necessary to fulfill the Association's responsibilities and expenses. The Declarant's assessment shall be according to section 8.01 and the assessment for those lots that have been transferred from the Declarant shall be determined according to the budget needs of the Association. Each owner upon receipt of conveyance of his or her lot shall be responsible for their assessment due, beginning on the first day of the month following such conveyance.
- 8.05 Annual Budget. Annual assessments shall be made on a calendar year basis; provided

however that the first annual assessment shall be for the balance of the calendar year remaining after the date fixed by the Association as the date of commencement of the Project. The Association shall give written notice to each Owner as to the proposed budget and the amount of the annual assessment (hereinafter "Annual Assessment") with respect to his Lot not less than thirty (30) days nor more than sixty (60) days prior to the beginning of the calendar 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 calendar year and the major guideline under which the Project shall be operated during such annual period.

- 8.06 Payment. Each Annual Assessment shall be due and payable in monthly installments on the 1st day of each and every month and no separate notices of such monthly installment shall be required. Each monthly assessment shall bear interest at the rate of eighteen (18) percent per annum from the date it becomes due and payable if not paid within (30) days after such date. In addition, in the event that any installment of the Annual Assessment is not paid within thirty (30) days of the date such installment becomes due, a \$ 10.00 per month late fee shall be assessed and the Association may, at its option, and upon thirty (30) days' prior written notice to the Owner accelerate the due date for all remaining Annual Assessment installments of the calendar year and all accrued but unpaid interest thereon. Payment of the Annual Assessment installments so accelerated shall be due at the expiration of said thirty (30) day notice period and interest shall accrue on the entire sum at the rate of eighteen percent (18%) per annum from such date until paid in full. 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 this 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 date thirty (30) days after notice of such assessment shall have been given to the Owner in the manner provided in this Declaration.
- 8.07 Inadequate Funds. In the event that the Common Expense Fund proves inadequate at any time for whatever reason, including nonpayment of any Owner's assessment, the Association may levy additional assessments in accordance with the procedure set forth in Section 8.08 below, except that the vote therein specified shall be unnecessary.
- 8.08 Special Assessments. In addition to the Annual Assessments authorized by this Article, the Board of Trustees on behalf of the Association may, levy, at any time and from time to time, upon the affirmative vote of at least fifty-one percent (51%) of the members of the Association, special assessments (hereinafter "Special Assessments"), payable over such periods as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Project or improvements thereon or any part thereof, or for any other expenses incurred or to be incurred as provided in this Declaration (including without limitation Common Expenses). This Section shall not be construed as an independent source or authority for the

Association to incur expenses, but shall be construed to prescribe the manner of assessing for expenses authorized by other sections or articles hereof. Any amounts assessed pursuant hereto shall be assessed to Owners on the same basis as set forth in Section 8.04. (Namely in proportion to the number of lots in the project). Notice in writing of the amount of each such Special Assessment and the time for payment thereof shall be given promptly to the Owners. No payment shall be due less than thirty (30) days after such notice shall have been given. All unpaid portions of any Special Assessment shall bear interest at the rate of eighteen percent (18%) per annum from the date such portions become due if not paid within thirty (30) days after such date.

- 8.09 Reimbursement Assessment on Specific Lot. In addition to the monthly assessment and any special assessment authorized pursuant to this article, the Board may levy at any time Reimbursement Assessments (a) on every lot especially benefitted 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 every Lot the Owner or occupant of which shall cause any damage to the Common Areas necessitating repairs; and (c) on every Lot as to which the Association shall incur any expense for maintenance or repair work performed, or enforcement action taken, pursuant to the Section 7.04 (b) or other provisions of this Declaration. The aggregate amount of any such Reimbursement Assessments shall be determined by the cost of such improvements, repairs, maintenance or enforcement action, including all overhead and administrative costs, and shall be allocated among the affected Lots according to the 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 work. If a special benefit arises from any improvement which is part of the general maintenance obligations of the Association, it shall not give rise to a Reimbursement Assessment against the Lots benefitted.
- 8.10 Reimbursement Assessment for Declarant. Until such time that the Declarant has conveyed title of all lots to Owners, Declarant shall be billed proportionately, by the Association, according to the number of Lots owned by the Declarant, for all expenses incurred and paid by the Association pursuant to section 8.05. (ie: In the event Declarant owns 5 lots and the Association pays for an obligated expense as specified in section 7, then Declarant upon receipt of billing from the Association shall reimburse the Association at the rate of 5/19 of the total expenditure.) Declarant hereby agrees to pay this reimbursement in a timely manner according to the schedule set forth in Section 8.06.
- 8.11 Lien for Assessments. All sums assessed to a Lot pursuant to the provisions of this Section 8, together with interest thereon as provided herein, shall be secured by a lien on such Lot in favor of the Association. To evidence a lien for sums assessed pursuant to this Section 8, the Association may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner, and a description of the Lot. Such a notice shall be signed and acknowledged by a duly authorized officer of the Association and may be recorded in the office of the County Recorder of Utah County, State

of Utah. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by judicial foreclosure by the Association in the same manner in which mortgages on real property may be foreclosed under the laws of the State of Utah. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceedings, the costs and expenses of filing the notice of lien and all reasonable attorneys' fees. Such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any assessments which shall become due during the period of foreclosure, and all such assessments shall be secured by the lien being foreclosed. The Association shall have the right and power to bid an amount equal to its existing lien at any foreclosure sale, and to acquire, hold, convey, lease, rent, mortgage or use the Lot the same as the Owner. A release of lien shall be executed by the Association and recorded in the office of the County Recorder of Utah County, Utah, upon payment of all sums secured by a lien which has been made the subject of a recorded notice of lien.

- 8.12 Subordination of Liens 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 date the Mortgage was recorded; 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.
- 8.13 Certificate of Payment of Assessments. Upon payment of a reasonable fee and upon written request of any Owner or any Mortgagee, prospective Mortgagee, or prospective purchaser of a Lot, the Association shall issue a written statement setting forth the amount of the unpaid assessments, if any, with respect to such Lot; the amount of the current yearly assessment and the portion thereof which has heretofore been paid; credit for advanced payments or prepaid items, including, but not limited to, prepaid insurance premiums; and such statement shall be conclusive upon the Association in favor of persons who rely thereon in good faith. Unless such request for a statement of account shall be complied with within ten (10) days, all unpaid assessments which become due prior to the making of such request shall be subordinate to the lien of a Mortgagee which acquired its interest subsequent to requesting such statement. Where a prospective purchaser makes such request, both the lien for such unpaid assessments and the personal obligations of the purchaser shall be released automatically if the statement is not furnished with the ten (10) days provided herein and thereafter an additional written request is made by such purchaser and is not complied with within ten (10) days, and the purchaser subsequently acquires the Lot.



- 8.14 Notice to and Payment by Mortgagee of Unpaid Assessments. The Association shall report to any Mortgagee or other encumbrancer of a Lot any unpaid assessments remaining unpaid for longer than ninety (90) days after the same shall have become due; provided, however, that such Mortgagee or encumbrancer first shall have furnished to the Association written notice of such encumbrance and a request for notice of unpaid assessments. A Mortgagee or other encumbrancer holding a lien on a Lot may pay, but shall not be required to pay, any amounts secured by the lien created by this Notice, and upon such payment such shall be subrogated to all rights of the Association with respect to such lien, including priority.
- 8.15 Personal Obligation of Owner. The amount of any Annual, Special Assessment or Reimbursement Assessment shall be the personal obligation of the Owner to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the Common Areas or by abandonment of his Lot or by waiving any services or amenities provided for in this Declaration. In the event of any suit to recover a money judgment for unpaid assessments hereunder, the involved Owner shall pay the costs and expenses incurred by the Association in connection therewith, including reasonable attorneys' fees.
- 8.16 Personal Liability of Purchaser. Subject to the provision of Sections 8.12 and 8.13 a purchaser of a Lot shall be jointly and severally liable with the seller thereof for all unpaid assessments against such Lot up to the time of the grant or conveyance; provided, however, that the provisions of this Section shall not prejudice the purchaser's right to recover from the seller the amount paid by the purchaser for such assessments.
- 8.17 Lien for Fines. The Association may levy fines against any unit owner who violates any of the provisions of the Declaration of Easements, Covenants, Conditions and Restrictions, or the Articles of Incorporation, By-laws or Rules and Regulations of the Association. Said fines shall be secured by a lien on such Lot and shall be superior to all other liens and encumbrances on such Lot except only for (a) valid tax and special assessment liens on the Lot in favor of any governmental assessment authority; (b) encumbrances on the Lot recorded prior to the date notice of the lien provided for herein is recorded; and (c) other annual and special assessments recorded prior to the date notice of this lien is recorded.

## ARTICLE IX

### USE RESTRICTIONS

- 9.01. 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 Living Units.
- 9.02 Use of Lots and Living Units. All Lots are intended to be improved with Living Units, approved and authorized accessory buildings, approved and authorized hardscape,

landscape, fencing, and are restricted to such use. Each Living Unit shall be used only as a family residence, as defined in section 14.06.020 of the Provo City Ordinances. No Lot or Living Unit shall be used, occupied, or altered in violation of law, so as to jeopardize the support of any other Living Unit, so as to create a nuisance or interfere with the rights of any Owner, or in a way which would result in an increase in the cost of any insurance covering the Common Areas.

9.03 Recreation Vehicles. Boats, trailers, large trucks, and commercial vehicles belonging to Owners or other residents of the Property shall be parked only within such part of the common Areas as the Association may specify in the future. It should be noted that as of the date of this document there is no place specified for storage of recreational vehicles and until such area is provided, no recreational vehicles shall be permitted and stored in any vehicle parking area.

9.04 Parking. Each Owner shall provide sufficient off street parking for all vehicles appurtenant to their lot. Parking shall not be allowed in the front yard setback or a side yard setback that is adjacent to a street unless it is in a designated driveway, and is approved by both the Architectural Board and the Board of Trustees. Parking will not be allowed on the streets except for vehicles that are related to construction or repairs occurring on the Project, and/or for emergency vehicles including but not limited to police, fire, and medical.

9.05 Exception for Declarant. Notwithstanding the restrictions contained in Section 4 and in Section 9.02, 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, and/or sale of all Lots owned by the Declarant.

9.06 Enforcement of Land Use Restriction. The following persons 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 portion of the Additional Land;
- b. Any Owner; or
- c. The Association,
- d. Provo City

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

## ARTICLE X

ARCHITECTURAL CONTROL

- 10.1 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 insure that all improvements 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.
- 10.02 Submission to Committee. No Living Unit, accessory or addition to a Living Unit, including but not limited to, driveways, internal sidewalks, fencing and landscape shall be constructed, and no alteration, repainting, or refurbishing of the exterior of any Living Unit shall be performed, unless complete plans and specifications therefore have first been submitted to and approved by the Committee.
- 10.03 Standard. In deciding whether to approve or disapprove plans and specifications submitted to it, the Committee shall use its best judgement to insure that all improvements, construction, landscaping, and alterations on Lots within the Property conform to and harmonize with existing surroundings and structures. The architectural guidelines will be used as guidelines, however the committee will consider each house based on overall design and neighborhood compatibility and may override the guidelines.
- 10.04 Architectural Guidelines. It is the purpose of these guidelines to establish a minimum acceptable standard by which architectural and landscape plans for single family residences may be compared during review by the Architectural Review Committee. These guidelines are intended to help prospective owners know the overall character of this project from its conception so that they may add to, rather than detract from it. Each new building should reinforce, and be reinforced by the existing development.

The intent is to leave as much design freedom as possible to the prospective owner, but to do so within the parameters established by these guidelines. The resulting development, then, will be variations on the theme herein established.

Homes should be designed with sensitivity to the existing surroundings-both natural and man-made, and to the visual and functional needs of both inhabitants and neighbors.

Care should therefore be taken during the design of each building and its surroundings to consciously conform to each of the following major concerns:

- a. Views: Within the constraints imposed by the site and the master plan, both views from each site and views through each site should, if possible, be preserved. Views of the

mountains to the north, east and south, and of the Valley to the south, west, and north should be considered. Care should be exercised to not align windows of one house with those of another so that house to house privacy may be preserved.

b. Style: The overall character of theme of the neighborhood is based upon a country tradition style. Modernistic styles will be approved or disapproved at the sole discretion of the architectural committee.

c. Roof Shape: Hipped, modified hipped, or gabled roof is the accepted dominant roof shape. Less dominant projections such as dormer, etc., may be of a hip gabled or shed design. Eaves and Overhangs - A minimum 12" overhang is approved. Roofs having no overhangs are not permitted. Facias shall be a minimum vertical dimension of 5".

d. Roof Slopes: Roofs shall be a minimum pitch of 4 in 12. Flat roofs are not permitted as a dominant roof design.

e. Roof Materials: Heavy textured asphalt shingles are the accepted roof material, however Hand-split, and medium-butt cedar wood, shake or tile and metal shingles are allowable.

f. Night Lighting: Each house shall install and maintain one (and only one) post-type front yard light of a lantern style to be mounted at a height not less than 4 feet, and no more than 7 feet at a site location to be approved by the review committee.

g. Building Shapes & Masses: Long expanses of wall or roof without a change in plane are discouraged.

h. Front Entry: The main front door should be a strong visual focal point to indicate the principal pedestrian arrival point. A covered front porch is highly recommended. Other elements which intensify the front door as the primary point of interest on the street-side of the building may be acceptable.

i. Doors and Windows: Windows of a traditional design are encouraged which make use of multiple-pane sash. Exterior doors should not be flat-slab type but rather a form of traditional paneled, planked, or sawbuck style. Likewise, garage doors should be a traditional style. View into garages should be protected by sensitivity in placement and treatment of surrounding landscaped areas.

j. Exterior Wall Materials: The dominant wall building material shall be brick masonry, stone, and stucco. Ornate brick bonds, corner quoins, brick moldings, and contrasting stone lintels and sills are approved. Siding is acceptable but shall not cover more than forty percent (40%) of any surface.

k. Landscaping: All yards of a Lot are to be landscaped and maintained by the Lot Owner.

Rolling grass lawns bordered by planting beds are encouraged. A mixture of deciduous and evergreen shrubs and trees will help year-round visual appeal. Individual landscape plans shall be approved by the Architectural Board. All Lots must be fully landscaped using grass, trees, and shrubs or bushes within sixty days (60) of the completion of a home. Each lot shall have a minimum of five (5) trees and either eight (8) shrubs, or eight (8) bushes.

l. Fencing designs, materials and locations shall be approved by the Architectural Committee. Fencing of only side yards and rear yards shall be permitted.

m. Size of Homes:

i) All homes, excluding garages, must have at least 1,000 square feet finished on the main floor.

n. Detached garages will be allowed. They must meet Provo city guidelines for accessory buildings.

o. Water Conservation: All homes shall use low flow toilets and showers.

10.05 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.

10.06 Liability for Damages. The Committee shall not be held liable for damages by reason of any action, inaction, approval, or disapproval by it with respect to any request made pursuant to this Article.

10.07 Exception for Declarant. The foregoing provisions, Section 10.04 (f) and 10.04 (k) of this Article 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.

10.08 Contractor. All homes built in the Property for the period of ten (10) years after these covenants are recorded shall be constructed under the direction, supervision and control of the Declarant or assigns.

10.09 Setbacks. Front yard setback shall be a minimum of twenty (20) feet, unless the designated front yard is on a public street. Then and only then shall the front yard setback be thirty (30) feet. Side yard setbacks shall be a minimum of five (5) feet on the garage side of the house and ten (10) feet on the living side of the house. Side yards setbacks next to a public or private street shall be a minimum of twenty (20) feet. Rear yard setbacks shall be a minimum of twenty (20) feet.

- 10.10 Driveways. Driveways shall be designed so that there is adequate space to park vehicles so as not to encroach upon the sidewalks. A minimum of twenty (20) feet from the back of the sidewalk to the garage entry shall be required. In addition, any parking area that is adjacent to those sidewalks designated as common area and upon a Lot, shall be a minimum of twenty (20) feet in length and of adequate design to allow vehicles to park thereon without encroaching upon the common sidewalk area.
- 10.11 Phasing. No phasing, or additional phasing without the consent of the Board shall be allowed.

## ARTICLE XI

### INSURANCE

- 11.01 Hazard Insurance. The Association shall procure and maintain, from a company or companies holding a general policyholder's rating of B or better or a financial rating of Class VI or better from Best's Insurance Reports, 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 and Facilities, including building service equipment and common personal property and supplies, owned by the Association with either a Replacement Cost Endorsement or a Guaranteed Replacement Cost Endorsement and an Agreed Amount Endorsement or its equivalent, an Inflation Guard Endorsement, if available, and such other endorsements as the Association shall deem necessary. The Association shall not provide nor be required to provide hazard or liability insurance for any of Owner's improvements or personal property. Such policy or policies shall provide for deductibles which shall not be greater than the lesser of Ten Thousand Dollars (\$10,000.00) or one percent (1%) of the face amount of the policy. Such insurance policy or policies shall name the Association as insured and shall afford protection against loss or damage by fire and other hazards that are normally covered by the standard extended coverage endorsement, and by vandalism, malicious mischief, and such other risks as are normally covered by the standard "all risk" or Cause of Loss-Broad Form policy of insurance. The Policy shall provide that it may not be canceled or substantially modified by the insurer unless it gives at least thirty (30) days' prior written notice thereof to each insured.
- 11.02 Liability Insurance. The Association shall procure and maintain from a company or companies holding a general policyholder's rating of B or better or a financial rating of Class VI or better from Best's Insurance Reports a policy or policies (herein called the "Policy") of the Association and the Owners against claims for bodily injury and property damage arising out of the operation, maintenance and use of the Common Areas, any activities thereon, and any conditions of the Common Areas under a Comprehensive General Liability form of policy. Such insurance shall be for such limits as the Association may decide, but not less than \$1,000,000 for personal injury and property damage arising out of a single occurrence

which coverage shall include protection against water damage liability, liability for non-owned and hired automobiles, 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 to the Common Areas. The Policy shall contain an endorsement which shall preclude the insurer from denying the claim of any Owner because of the 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 it may not be canceled or substantially modified by the insurer unless it gives at least thirty (30) days' prior written notice thereof to each insured.

- 11.03 Fidelity Insurance. The Association shall procure and maintain from a company or companies holding a general policyholder's rating of B or better or a financial rating of Class VI or better from Best's Insurance Reports a policy or policies of blanket fidelity insurance to protect against dishonest acts on the part of any trustee, officer, manager, agent, employee or other person who administers, handles, or is otherwise responsible for the funds of the Association. Such policy or policies shall name the Association as the obligee, shall provide coverage for the maximum sum of funds, including reserves, which will be in the possession or custody of the Association at any time the policy is in force, but in no event less than three (3) months assessment on all Lots, plus reserves. The policy or policies shall provide that they may not be cancelled or substantially modified by the insurer unless it gives at least thirty (30) days prior written notice thereof to each insured. The policy shall contain a waiver of any defense for persons who serve without compensation. In the event the Association shall engage the services of a management agent who shall administer, handle or be responsible for the funds of the Association, then the Association shall require such management agent to provide a policy or policies of fidelity insurance which shall provide the same insurance coverage as required of the Association by this Section. The foregoing of Section 11.03 notwithstanding, Section 11.03 shall only become applicable at such time as the criteria in Section 7.01 are met and the Declarant no longer has the right to appoint the board.
- 11.04 Worker's Compensation. The Association shall carry worker's compensation and employer's liability insurance and other similar insurance with respect to all employees of the Association in the amounts and in the forms now or hereafter required by law.
- 11.05 Additional Insurance. The Association may also procure such additional insurance which shall insure the Common Areas, the Association or the Owners and others against such additional risks as the Association shall deem advisable.
- 11.06 General Requirements. Each policy of insurance obtained by the Association shall be written by insurers licensed in the State of Utah. If reasonably possible, each policy of insurance to be obtained by the Association shall provide:
- (a) a waiver of the insurer's right of subrogation against the Association, Owners, and their respective trustees, directors, officers, agents, employees, invitees and tenants;

(b) that it cannot be cancelled, suspended or invalidated due to the conduct of any Owner or Owners, but only due to the conduct of the Association, and then only after the Association shall have failed to cure or correct the defect within a reasonable time after a written demand to so cure or correct; and

(c) that any "no other insurance" clause shall not apply to any insurance maintained individually by any Owner.

- 11.07 Owners' Insurance. Each Owner shall obtain insurance at his own expense, providing coverage on Owner's Lot, Owner's personal property and Owner's personal liability and covering such risks as Owner may deem appropriate. Each such policy shall provide that it does not diminish the insurance carrier's coverage for liability arising under insurance policies of the Association, the other Owners, and the trustees, directors, officer, servants, employees, agents, invitees or tenants of any of them, if such insurance can be obtained in the customary practice without substantial additional premium charge for the waiver of rights of subrogation.

## ARTICLE XII

### DAMAGE OR DESTRUCTION

- 12.0 Damage or Destruction to Common Areas. In the event the Common Areas, or any portion thereof, shall be damaged or destroyed, the Association shall take all necessary and appropriate action to effect repair or reconstruction thereof. Such repair or reconstruction shall be substantially in accordance with the original plans and specifications of the Project, or in accordance with such other plans and specifications as the Owners may approve, provided that in the latter event the location of the Lots and of any buildings shall be substantially the same as prior to the damage and destruction.
- 12.02 Funds for Repair and Reconstruction. If the proceeds of any insurance shall be insufficient to pay the estimated or actual costs of repair or reconstruction, the Association may levy, in advance, one or more Special Assessments sufficient to pay for such estimated or actual costs of repair or reconstruction. Such Special Assessment shall be levied and collected in accordance with the provisions of Section 8.08. The costs of repair and reconstruction shall be deemed disbursed first from any insurance proceeds, and then from any Special Assessment. Any unexpended portion of the Special Assessment shall be returned to the Owners in proportion to their contributions thereto.
- 12.03 Election not to Repair or Reconstruct. In the event the Common Areas of the Project are destroyed or damaged to the extent of more than seventy-five percent (75%) of the value thereof, then the Owners, each owner subject to the consent of their respective Mortgagees, who own at least 80% of the lots in the project may elect to not repair, rebuild or reconstruct the Project. Such election shall be made at a duly called meeting of the members of the



Association which is held not more than one hundred (100) days after the date of the damage or destruction. If the Owners shall so elect, then the Project shall not be repaired, rebuilt or reconstructed, but shall be disposed as soon as reasonably practical after such election.

### ARTICLE XIII

#### MORTGAGEE PROTECTION

- 13.01 Amendment. No amendment to this Declaration shall affect the rights of any Mortgagee interested under a Mortgage which is in effect at the time of the amendment or any successor or assign thereof, unless such Mortgagee has consented in writing to such amendment.
- 13.02 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 ninety (90) 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.
- 13.03 Notice of Meetings. Upon request of a Mortgagee, the Association shall give to such Mortgagee of a Lot notice of all meetings of the Association. Each Mortgagee shall have the right to designate in writing a representative to attend all such meetings.
- 13.04 Right to Examine Association Records. Any Mortgagee, 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.
- 13.05 Right to Pay Common Area 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.
- 13.06 Insurance and Condemnation Proceeds. No provision of this Declaration shall be deemed to grant any Owner any rights in or to a distribution of insurance proceeds or a condemnation award for the loss to or the taking of a Lot or the Common Areas which are prior to the

rights of the Mortgagee under its respective Mortgage to such distribution of insurance proceeds or condemnation award.

## 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 registered agent, or any officer or Trustee of the Association.
- 14.02 Amendment of this Declaration. The Owners at any time, and from time to time, have the right to amend this Declaration and/or the Plat upon the written approval of the Owners of not less than two-thirds of the Lots. Any such amendment shall be by an instrument duly recorded with the County Recorder of Utah County, Utah.
- 14.03 Declarant's Rights Assignable. Declarant's rights under this Declaration or in any way relating to the Property or the Project may be assigned.
- 14.04 Enforcement of Restrictions. The following persons shall have the right to exercise or seek any remedy at law or in equity to interpret, to enforce compliance with, or to obtain redress for violation of this declaration; (a) any Owner; (b) the Association; or (c) any Mortgagee. The prevailing party in an action for the interpretation of, the enforcement of, or to obtain redress for violation of any provisions of this Declaration shall be entitled to collect court costs and reasonable attorneys fees.
- 14.05 Number and Gender. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the singular, and the use of any gender shall include all genders.
- 14.06 Severability. If any of the provisions of this Declaration or any paragraph, sentence, clause, phrase, or word, or the application thereof in any circumstance be invalidated, such invalidity shall not affect the validity of the remainder of the Declaration, and the application of any such provision, paragraph, sentence, clause, phrase, or word in any other circumstances shall not be affected thereby.
- 14.07 Topical Headings. The headings appearing at the beginning of the paragraphs of this Declaration are only for convenience of reference and are not intended to describe, interpret, define or otherwise affect the content, meaning, or intent of this Declaration of any paragraph or provisions hereof.

14.08 Effective Date. This Declaration, any Plat and any amendment or supplement to either, shall take effect upon the recording thereof in the office of the County Recorder of Utah County, Utah and shall remain in effect until terminated by the recording of an instrument executed and consented to in writing by all Mortgagees of Lots affected thereby in accordance with the provisions of Section 13.02.

14.09 Conflict. In case any provisions shall conflict with Utah law, Utah law shall be deemed to control.

Dated this 11<sup>th</sup> day of July, 1995.

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

**NORTH RIDGE COMPANY**  
a Utah Corporation

By: L. Wayne Ross  
L. Wayne Ross, President

STATE OF UTAH)

:SS

COUNTY OF UTAH)

On this 11<sup>th</sup> day of July, 1995, personally appeared before me L. Wayne Ross and \_\_\_\_\_ who being by me duly sworn, did say that they are the President and Secretary, respectively, of North Ridge Company, a Utah corporation, and that the foregoing Declaration was signed on behalf of said corporation by the authority of its Bylaws or a resolution of its Board of Directors, and said Officers acknowledged to me that said corporation executed same.

NOTARY PUBLIC: Lavern Black

My Commission Expires: 9-13-96 Residing At: Provo, ut.

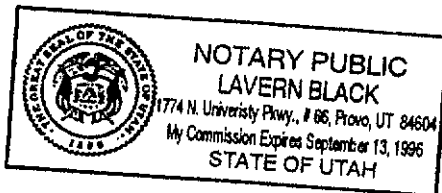


Exhibit A

BOUNDARY DESCRIPTION

BEGINNING AT A POINT WHICH IS 362.70 FEET EAST AND 709.38 FEET SOUTH FROM THE NW CORNER OF SECTION 5, T7S, R3E, SLB&M SAID POINT IS 123.00 FEET PERPENDICULARLY DISTANT FROM THE CENTERLINE OF 1250 EAST STREET; THENCE N 75°58'30" E 318.33 FEET; THENCE S 10°10'53" E 82.22 FEET; THENCE S 08°27'11" E 30.00 FEET; THENCE S 02°48'41" E 37.43 FEET; THENCE S 00°13'19" E 129.59 FEET; THENCE S 02°15'29" E 37.64 FEET; THENCE S 08°36'22" E 46.36 FEET; THENCE S 20°28'55" E 70.70 FEET; THENCE S 22°01'51" E 84.92 FEET; THENCE S 36°11'57" E 61.52 FEET; THENCE ALONG THE ARC OF A 321.12 FOOT RADIUS CURVE TO THE LEFT 449.40 FEET (CENTRAL ANGLE OF 80°11'03" AND A CHORD BEARING S 76°32'11" W 413.61 FEET); THENCE ALONG THE ARC OF A 307.00 FOOT RADIUS CURVE TO THE LEFT 49.62 FEET (CENTRAL ANGLE OF 09°15'35" AND A CHORD BEARING S 31°48'52" W 49.56 FEET); THENCE N 00°25'34" E 4.29 FEET; THENCE N 00°17'30" W PARALLEL TO THE CENTERLINE OF 1250 EAST STREET 612.61 FEET TO THE POINT OF BEGINNING. CONTAINING 4.136 ACRES, MORE OR LESS.

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LESS AND EXCEPTING THE FOLLOWING TWO PARCELS:

BEGINNING AT A POINT EAST 362.70 FEET AND SOUTH 709.38 FEET AND N 75°58'30" E 318.33 FEET FROM THE NORTHWEST CORNER OF SECTION 5, TOWNSHIP 7 SOUTH, RANGE 3 EAST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE S 10°10'53" E 82.22 FEET; THENCE S 08°27'11" E 30.00 FEET; THENCE S 02°48'41" E 1.30 FEET; THENCE S 84°57'06" W 8.53 FEET; THENCE N 14°00'57" W 111.84 FEET; THENCE N 75°58'30" E 17.09 FEET TO THE POINT OF BEGINNING. CONTAINING 1484 SQ. FT. OR 0.0341 ACRES, MORE OR LESS.

BEGINNING AT A POINT EAST 362.70 FEET AND SOUTH 709.38 FEET AND N 75°58'30" E 318.33 FEET AND S 10°10'53" E 82.22 FEET AND S 08°27'11" E 30.00 FEET AND S 02°48'41" E 37.43 FEET AND S 00°13'19" E 42.279 FEET FROM THE NORTHWEST CORNER OF SECTION 5, TOWNSHIP 7 SOUTH, RANGE 3 EAST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE S 00°13'19" E 83.81 FEET; THENCE N 05°47'07" W 84.07 FEET; THENCE N 88°50'06" E 8.15 FEET TO THE POINT OF BEGINNING. CONTAINING 342 SQ.FT. OR 0.0079 ACRES, MORE OR LESS.

BASIS OF BEARING: UTAH STATE PLANE COORDINATE SYSTEM, CENTRAL ZONE.