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Orém, Utah 84057

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## Declaration of Protective Easements, Covenants, Conditions, and Restrictions

### Carter Crossing Subdivision

### City of Provo, Utah County, Utah

This Declaration of Protective Easements, Covenants, Conditions, and Restrictions (this "Declaration") is made this 6 day of June, 2000 by Carter Crossing Development, L.C., a Utah limited liability company, in its capacity as the owner and developer of Carter Crossing Subdivision, an expandable planned residential development in the City of Provo, Utah County, Utah.

#### ARTICLE I

#### DEFINITIONS

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

**ACC** shall mean the Architectural Control Committee established pursuant to Article VII hereof.

**Additional Land** shall, at any point in time, mean all of the land in the City of Provo, Utah County, State of Utah, that is not included in Exhibit A hereto but is contiguous to the land described in Exhibit A hereto.

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

**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, whether annual or special assessments or Reimbursement Assessments.

**Association** shall mean Carter Crossing Owners Association, a Utah nonprofit corporation, and its successors and assigns.

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

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

**Common Areas** shall mean all portions or parcels of the Development designated as Open Space or Common Areas on the Plat, and shall include any and all amenities, landscaping, and improvements and the like thereon, together with all easements appurtenant thereto as reflected on the Plat.

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

**Declaration** shall mean this Declaration of Protective Easements, Covenants, Conditions, and Restrictions of Carter Crossing Subdivision, City of Provo, Utah County, Utah, as the same may be supplemented or amended from time to time.

**Development** shall mean the planned residential development known as **Carter Crossing Subdivision** as described in this Declaration and in the Plat and as it exists at any time.

**Director** shall mean a member of the Board.

**Lot** shall mean and refer to any of the separately numbered, individually described Lots 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 by the Association.

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

**Owner** shall mean any person who is the owner of record (as reflected by the Public Records) of a fee or undivided fee interest in any Lot, and any contract purchaser of any Lot. Declarant shall be an Owner with respect to each Lot owned by it. 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. 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 covering the Property entitled **Plat "A" Carter Crossing Subdivision, Provo City, Utah County, Utah**, prepared and certified to by **Dennis P. Carlisle, Registered Land Surveyor**, executed and acknowledged by Declarant, accepted by the City of Provo, and recorded in the of Public Records concurrently with this Declaration. Such term shall also include any subdivision plat or plats pertaining to all or any portion of the Additional Land as and when the same is annexed and added to the Development pursuant to the annexation provisions of Article III of this Declaration.

**Property** shall mean all land covered by this Declaration, including Lots and Common Areas and other land annexed to the Development as provided in this Declaration. The initial Property shall consist of the land described in Section 3.01 of Article III hereof.

**Public Records** shall mean and refer to the Office of the Utah County Recorder, Provo, Utah.

**Reimbursement Assessment** shall mean a charge against a particular Owner or the Owner's Lot or Residence in 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.

**Residence** shall mean a structure which is designed, constructed, and intended for use or occupancy as a single family residence on a Lot, together with any and all other improvements located on the same Lot.

## ARTICLE II

### PURPOSE AND EFFECTUATION

2.01 **Purpose.** The purpose of this Declaration is to provide for the preservation of the values of Lots, Common Areas, and Residences within the Development, and for the maintenance of the Common Areas.

2.02 **Effectuation.** From and after the effective date hereof: (a) Each part of the Development and each Lot lying within the boundaries of the Development shall constitute but constituent parts of a single planned residential development; (b) The Development shall consist of the Lots and the Common Areas which are described and depicted on the Plat, together with such additional Lots and Common Areas as may come into existence pursuant to the provisions hereof relating to annexation or expansion of the Development; (c) The Declaration for the Development shall consist of this document as the same may be modified, amended, supplemented, or expanded in accordance with the provisions hereof; and (d) The Plat of the Development shall consist of the instrument which is identified as **Plat "A", Carter Crossing Subdivision, Provo City, Utah County, Utah**, and recorded in the Public Records, as the same may be amended, and any subsequent plats which may be recorded in the Public Records pursuant to the provisions hereof relating to annexation or expansion of the Development.

## ARTICLE III

### PROPERTY DESCRIPTION AND ANNEXATION

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

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

**RESERVING UNTO DECLARANT**, however, such easements and rights of ingress and egress over, across, through, and under the such real property and any improvements (excluding buildings) now or hereafter constructed thereon as may be reasonably necessary for Declarant (in a manner which is reasonable and not inconsistent with the provisions of this Declaration): (i) to construct and complete each of the improvements described in this Declaration or in the Plat recorded concurrently herewith, and to do all things reasonably necessary or proper in connection therewith; (ii) to construct and complete on the Additional Land or any portion thereof such improvements as Declarant shall determine to build in its sole discretion (and whether or not the Additional Land or any portion thereof has been or hereafter will be added to the Development); and (iii) to improve portions of the such real 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, such real 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 recorded in the Public Records.

**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 hereby divided into forty-one (41) 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, and similar matters, as set forth in this Declaration.

**3.03 Annexation by Declarant.** Declarant may, from time to time, expand the Development subject to this Declaration by the annexation of all or part of the lands constituting the Additional Land. Subject to compliance with the conditions imposed by the following Section 3.04, the annexation of any such land shall become effective upon the recording in the Public Records of a plat of such Additional Land signed by the owner(s) thereof and of a supplemental declaration ("Supplemental Declaration") which (a) is signed by the then owner(s) of such Additional Land as Declarant; (b) describes the land to be annexed; (c) declares that the annexed land is to be held, transferred, sold, conveyed, and occupied as part of the Property subject to this Declaration; and (d) sets forth such additional limitations, restrictions, easements, covenants, and conditions, not inconsistent with those of this Declaration, as are applicable to the annexed land. When any such annexation becomes effective, the annexed land shall become part of the Property and the Development and subject to the provisions of this Declaration and any amendment or supplement thereto.

**3.04 Limitation on Annexation.** Declarant's right to annex land to the Development shall be subject to the following limitations:

(a) The annexed land must be part of the Additional Land set forth and described herein;

(b) The holder of each mortgage, deed of trust or other security device affecting any part of the Additional Land being annexed into the Development must consent, through appropriate instruments recorded in the Public Records, to the recording of the Supplemental Declaration and to the Plat to which such Supplemental Declaration relates;

(c) The Additional Land added to the Development must be subdivided into Lots and Common Areas designed to be used for purposes similar to those contemplated by this Declaration;

(d) All Common Areas covered by the Supplemental Declaration designated on the Plat related thereto shall be conveyed to the Association in accordance with and subject to the provisions of Section 5.03 of this Declaration; and,

(e) Declarant's right to annex land to the Development shall expire ten (10) years after this Declaration is recorded in the Public Records.

**3.05 No Obligation to Annex or Develop.** Declarant has no obligation hereunder to annex any Additional Land to the Development or to develop or preserve any portion of Additional Land in any particular way or according to any particular time schedule. No land other than the Property, as defined on the date hereof, and land annexed thereto in accordance with the terms of this Article, shall be deemed to be subject to this Declaration, whether or not shown on any subdivision plat filed by Declarant or described or referred to in any documents executed or recorded by Declarant.

**3.06 Other Annexation.** Anything herein to the contrary notwithstanding, to the extent that Declarant does not now or in the future may not own all of the Additional Land, the then owners of such Additional Land or parts thereof ("Adjoining Owners") may annex all or any part of the Additional Land to the Development and subject the Additional Land to the terms of this Declaration, provided that (a) the same limitations which are imposed on Declarant under Section 3.04 of this Article III shall be applicable to Adjoining Owners; (b) the Adjoining Owners make the recordings and comply with all the other requirements referred to in Section 3.03 of this Article III; and (c) the Declarant and the Owners approve such annexation.

## ARTICLE IV

### DUTIES AND OBLIGATIONS OF OWNERS

**4.01 Maintenance and Repairs.** Each Owner shall at the Owner's own cost maintain the Owner's Lot and any improvements constructed thereon in good repair at all times. In the event of the damage or destruction of any Residence, the Owner of the Lot on which such Residence 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 remodeling, rebuilding, or modification of any Residence exteriors or parts thereof must be submitted to and approved by the ACC pursuant to its procedures.

**4.02 Maintenance of Parking Strip.** Each Owner shall also maintain the strip of real property (the Parking Strip) between the Owner's Lot and the street and curb in front of the Owner's Lot. Without limitation of the generality of the foregoing, each Owner shall maintain any trees planted in the Parking Strip in connection with the initial development of the Development and shall replace any such tree that becomes diseased or unsightly with a healthy tree of the same species.

**4.03 Owners Insurance.** Each Owner shall be responsible to procure and maintain in force hazard insurance and liability insurance with respect to the Owner's Lot and Residence as is customary in projects such as the Development.

**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 non-exclusive 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 No. \_\_\_\_\_ as identified in the Plat recorded in the office of the Utah County Recorder as Entry No. \_\_\_\_\_, and Map Filing No. \_\_\_\_\_ contained within Plat \_\_\_\_\_ of **Carter Crossing Subdivision, Provo City, Utah County, Utah**, SUBJECT TO the **Declaration of Protective Easements, Covenants, Conditions, and Restrictions of Carter Crossing Subdivision**, recorded in the office of the Utah County Recorder in Book \_\_\_\_\_, at Page \_\_\_\_\_, as Entry No. \_\_\_\_\_ (as said Declaration may have heretofore been amended or supplemented), TOGETHER WITH a right and easement of use and enjoyment in and to the Common Areas described, and as provided for, in said Declaration (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.** After the initial development of the Common Areas, Declarant shall convey to the Association title to the various Common Areas free and clear of all liens, if possible, other than the lien of current general taxes and the lien of any non-delinquent Assessments, charges, or taxes imposed by governmental or quasi-governmental authorities. Declarant shall make every effort to release any liens on Common Areas which secure construction financing with the Development, leaving only the Lots as security therefor.

5.04 **Limitation on Easement.** Each Lot's appurtenant 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 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 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 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 the Lots. If any Owner utilizes property within the Owner's Lot that is subject to any such easement, he shall be responsible for the restoration to its former state of any portion of the property that may have been disturbed or damaged as a result.

## ARTICLE VI

### USE RESTRICTIONS AND COVENANTS

**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 Residences set forth herein.

**6.02 Residential Use.** The Property is zoned residential and is restricted to single family residential use pursuant to applicable provisions of Provo City Ordinances. Each Lot, Residence, and Owner are subject to the uses and restrictions imposed by such zoning (including any parking restrictions), and no Lot or Residence 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. No dwelling shall be erected, altered, placed, or permitted to remain on any Lot other than one single family dwelling, not to exceed two stories in height in addition to a basement (if any) or attic area. Each Residence must include a private garage on grade for not less than one automobile. Open storage is not permitted. Detached garages, accessory buildings, or carports built in addition to the required garage will be allowed only if approved by the ACC and if the architecture and exterior materials used are compatible with the Development.

**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 11.03 of this Declaration:

(a) No barn, coop, shed, sty or other building shall be constructed for housing pigs, cows, sheep, goats, horses, poultry, or other livestock of any kind nor shall any of the foregoing animals be kept, maintained or permitted on any Lot or within any Residence or otherwise within the limits of the Development. However, no more than two domesticated household pets will be permitted in accordance with Provo City Ordinances so long as such pets do not constitute a nuisance for other residents of the Development and comply with applicable leash laws and the rules and regulations adopted by the Board pursuant to Section 11.03 of this Declaration.

(b) No trailer, tent, shack, shed, or other out-building shall be placed upon or used at any time within the Development as a temporary or permanent residence for more than five (5) days.

(c) Except as set forth in rules and regulations adopted by the Board pursuant to Section 11.03 of this Declaration, campers, boats, boat-trailers, house-trailers, automobiles, trucks, motor-homes, horse trailers, or other trailers shall not be parked or stored on streets or other areas in open view within the Development and shall not be parked or stored in excess of two (2) days in driveways. Any of the above vehicles, or any part thereof, not in actual use shall be stored or placed in a garage, behind a fence, or other walled-off or enclosed space.

(d) No commercial vehicle exceeding three quarters (3/4) of a ton shall be kept or stored upon any Lot unless such vehicle is kept or stored in an enclosed garage when not in use. No commercial vehicle owned or in the possession or under the control of any resident or occupant in the Development shall be parked overnight in any street within the Development.

Commercial vehicle for this purpose shall include, but not be limited to, any truck, pickup,

van, bus, tractor, station wagon, taxi, automobile, or other vehicle used primarily for business or other commercial purposes as distinguished from vehicles used primarily for the transportation of persons other than for hire or other than for business or other commercial purpose.

(e) Except for (i) signs displayed during the home construction and sales period by the Declarant or by a home builder authorized by the Declarant, (ii) name plates for occupants of Residences no larger than one square foot, and (iii) one sign not exceeding four square feet advertising the sale or lease of a Lot or Residence, no signs shall be displayed to the public view on any Lot.

(f) There shall be no oil drilling, mining, quarrying, or related operations of any kind permitted upon any Lot or otherwise within the Development.

(g) No rubbish shall be stored or allowed to accumulate anywhere in the Development, except in sanitary containers. Rubbish shall include, but not be limited to bushes or weeds, household wastes, and automobiles, campers, trailers, boats, or parts thereof, which have been in a state of disrepair or unassembled for a period exceeding eight (8) days. Trash, garbage, and other wastes shall be kept in sanitary containers, maintained in a clean and sanitary condition, and stored in garages screened by adequate planting or fencing so as to be concealed from view of neighboring Lots and streets.

(h) No external radio, citizen's band, ham radio or any similar transmitting and/or receiving antennas or equipment shall be placed upon any Lot, Residence, or other structure within the Development; provided, however, that television and radio antennas or other electronic reception devices may be erected so long as they shall be completely erected, constructed, and placed within the enclosed area of the dwelling or garage on the Lot. Exceptions must first be approved in writing by the ACC. Any installation of a satellite reception dish on any Lot shall be located so that it is obscured from view of the street and neighbors by fencing, plants, or tasteful construction to obscure the dish.

(i) No Residence 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.

(j) No dwelling, house, or other structure shall be constructed or situated on any of the Lots except in conformity with the "set back" lines as established in each instance by the Plat, the ACC, and applicable law and ordinance.

**6.04 Landscaping.** All yards (front, rear, and side) must be landscaped within 12 months of the issuance of the Certificate of Occupancy by Provo City. Chain-link fencing will not be allowed. Landscaping shall be deemed to include grass, shrubbery, trees, and an underground sprinkling system capable of properly irrigating the front yard. All owners will keep and maintain their yards in a neat, clean, and orderly condition and appearance at all times. Without limitation of the generality of the foregoing, the Owners shall maintain all landscaping and yards by watering, fertilizing, lawn mowing, weed extraction, pruning, and leaf and snow removal.

**6.05 Uniform Mail Boxes.** On each Lot upon which a Residence is constructed, the Owner shall install and maintain, at the Owner's expense, a mail box which must conform to ACC, Provo City, and U.S. Postal Service standards as to size, style, and location.

**6.06 Utilities.** All electric, television, cable television, telephone and other utility line installments and connections from the property line of any Lot to the Residence or structures thereon shall be placed underground.



6.07 **Change in Grade.** After the grading of the Development by the Declarant, the surface grade or elevation of the various Lots in the Development shall not be substantially altered or changed in any manner which would affect the relationship of such Lot to other Lots in the Development, or which would result in materially obstructing the view from any other Lot in the Development.

6.08 **Dwelling Quality and Size.** The following sub-sections shall serve as minimum guidelines only:

(a) For a single story dwelling, the main floor finished living area above grade will not be less than 1,000 square feet exclusive of balconies, porches, and garages.

(b) For multi-level dwellings approved by the ACC, the finished living area above grade will not total less than 750 square feet on the main level and 1125 total square feet, exclusive of balconies, porches, and garages.

(c) The exterior material of each structure shall consist of brick, rock, stucco, or siding, or a combination thereof. Siding must be aluminum, steel or vinyl, and must be pre-finished, painted, or stained and maintained in good repair and condition at all times. The ACC shall reserve the right to require the use of certain materials or combinations based upon the design or plan submitted and will limit all-siding designs to facades which traditionally use such material.

## ARTICLE VII

### ARCHITECTURAL CONTROL

7.01 **Architectural Control Committee.** The Board of the Association shall appoint a three-member Architectural Control Committee, the function of which shall be to ensure that all improvements and landscaping within the Development harmonize with existing surroundings and structures. The ACC need not be comprised of Owners. If such a ACC is not appointed, the Board itself shall perform the duties required of the ACC.

7.02 **Submission to ACC.** No Residence or addition to a Residence nor any wall or fence shall be constructed or maintained, and no alteration or refurbishing of the exterior of any Residence shall be performed, unless complete plans and specifications therefor have first been submitted to and approved by the ACC. In addition, no structure of any kind shall be moved to any location in the Development from any other place within or outside the Development without the prior written approval of the ACC.

7.03 **Standard.** In deciding whether to approve or disapprove plans and specifications submitted to it, the ACC 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. As to all improvements, construction, and alterations within the Development, the ACC shall have the right to refuse to approve any design, plan, or color for such improvements, construction, or alterations, which is not suitable or desirable in the ACC's opinion, for any reason, aesthetic or otherwise, and in so passing upon such design, the ACC shall have the right to take into consideration the suitability of the proposed improvement, the material of which it is to be built, the harmony thereof with the surroundings, the effect or impairment that such improvements will have on view of surrounding building sites, and any and all facts which, in the ACC's opinion, shall affect the desirability or suitability of such proposed structure, improvements, or alterations. The approval of the ACC of any plans or specifications submitted for approval as herein required shall not be deemed to be a

waiver by the ACC of its right to object to any of the features or elements embodied in such plans and specifications, if or when the same features or elements are embodied in the plans and specifications of any other improvements submitted for ACC approval. 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 as the prior structure; and, if the plans and specifications therefor meet such criteria, the ACC must approve the same.

**7.04 Approval Procedure.** Any plans and specifications submitted to the ACC shall be approved or disapproved by it in writing within thirty (30) days after submission; provided, however, that plans and specifications for any replacement structure to be constructed in substantially the same configuration, location, architectural style and to be of substantially the same size as its predecessor shall be approved or disapproved within ten (10) days after submission. In the event the ACC 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 ACC 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. Construction on all homes must commence within one year of the ACC approval, or such approval will lapse.

**7.06 Liability for Damages.** Neither the ACC 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 ACC 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 Residences 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 recorded in the Public Records, all Lots and Common Areas of the Development will be located approximately in the locations shown on the Plat.

## ARTICLE VIII

### INSURANCE

**8.01 Liability Insurance.** The Board shall procure and maintain a policy or policies (herein called the "Policy") of Public Liability Insurance to insure the Association, the Board, the Managing Agent, any 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 insured as between themselves are not prejudiced. The policy shall provide that the policy may not be canceled or substantially modified by the insurer unless it gives

at least thirty (30) days' prior written notice 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.

**8.02 Additional Insurance; Further General Requirements.** The Board may also procure hazard insurance for any improvements on the Common Areas or other 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.

**8.03 Fidelity Coverage.** The Association may elect to maintain fidelity coverage to protect against dishonest acts on the part of officers, directors, managing agents, 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' Assessments 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 thirty (30) days' prior written notice to the insured.

**8.04 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, or 8.03 of this Article VIII 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 or risks being insured.

## ARTICLE IX

## RIGHTS OF MORTGAGEES

9.01 **Title and Mortgage 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 Property. A breach of any of the covenants, provisions, or requirements of this Declaration shall not defeat, impair, or render invalid the lien of or other rights under any Mortgage. Unless and until it enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu thereof, any Mortgagee interested under any Mortgage affecting a Lot or any other portion of the Property shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, any of the covenants, provisions, or requirements of this Declaration (other than those, if any, concerning a consent or approval to be given by a Mortgagee, in the event a Mortgagee's failure to give same is wrongful). No amendment to this Declaration shall in any material 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, which consent shall not be unreasonably withheld.

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 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 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 sixty (60) days after default occurs, provided that the failure to provide any such notice shall not result in any liability to the Association of any type.

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.

## ASSOCIATION BYLAWS

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

## ARTICLE X

### BYLAWS - MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

**10.01 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 such ownership ceases for any reason, at which time the Owner's 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 and shall be appurtenant to and may not be separated from the ownership of a Lot.

**10.02 Voting Rights.** The Association shall initially have two (2) classes of voting memberships, votes of both classes being of equal value as to all matters:

(a) Class A. Each Owner, including Declarant, shall be a Class A member entitled to one (1) vote for each Lot in which such member holds the interest required for such Class A membership.

(b) Class B. Declarant shall be the only Class B member and shall be entitled to one (1) vote for each Association Class A membership outstanding at such time (in addition to any votes to which it is entitled as a Class A member); provided, however, that such Class B membership shall lapse and become a nullity on the first to happen of the following events:

(i) ninety (90) days following the date upon which the total outstanding Class A memberships, other than those held by Declarant, equal the total number of Class B votes to which Declarant is entitled pursuant to the provisions of Section 10.02(b); or

(ii) on December 31, 2004; or

(iii) upon surrender of said Class B membership by Declarant in writing to the Association. Upon the lapse or surrender of the Class B membership, as provided in Section 10.02(b)(i) and (ii), Developer shall be and thereafter remain a Class A member as to each and every Lot in which Declarant holds the interest otherwise required for Class A membership.

**10.03 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 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.

**10.04 Records of Ownership.** Every Owner shall promptly cause to be duly filed of record the conveyance document (or in the case of a contract buyer, a copy of the sales contract or notice of interest) to him of his Lot and shall file a copy of such conveyance 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 Public Records regarding the Owners and Mortgagees of Lots.

**10.05 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.

**10.06 Annual Meetings.** Annual meetings of the membership of the Association shall be held in the month of September of each year beginning in the year 2001 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 September may be chosen if it is deemed by the membership to be more convenient. At such annual meetings, members of the Board shall be elected, 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.

**10.07 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.

**10.08 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 ten (10), but not more than twenty (20), days prior to such meeting. The mailing of notice by prepaid U.S. Mail or by delivery in person shall be considered notice served.

**10.09 Quorum.** Owners present in person or by proxy at any membership meeting duly called pursuant to notice shall constitute a quorum at all meetings, both annual and special; provided, however, that such Owners collectively be entitled to cast at least forty percent (40%) of the total Association votes eligible to vote.

**10.10 Adjourned Meetings.** If any meeting of Owners cannot be organized because a quorum is not present, the Owners who are present either in person or by proxy may adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called at which time the requirements for a quorum shall be reduced by one-half that required in Section 10.09.

**10.11 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 ACC immediately following each annual meeting of Owners at which the new Board has been elected; provided that until the Board is elected by the Owners pursuant to Section 10.13, the officers will be appointed by Declarant.

(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.

**10.12 Initial Composition of Board; Declarant Control.** Declarant alone shall have the right to select the members of the initial Board, which may be composed of less than five (5) Directors but not less than three (3), none of whom need be Owners. Such right of the Declarant to appoint the Board shall remain in Declarant until the lapse of the Class B membership as provided in sub-Section 10.02(b) or until Declarant voluntarily waives such right, in whole or in part, in writing and requests the Association to elect members of the Board in accordance with the Association's Bylaws set forth in Section 10.13, whichever event shall first occur.

**10.13 Board of Directors; Owner Control.** The Association, through the Board, is responsible for the maintenance of any Common Areas, the determination, imposition and collection of Assessments, the enforcement of the provisions of this Declaration and, in general, the preservation of the residential quality and character of the Development to the benefit and general welfare of the Owners. Subject to the provisions of Section 10.12, the Board shall be comprised of five (5) Directors, each of whom shall be an Owner (or an officer, director, or agent of an Owner that is not an individual). The Owners may increase the maximum number of Directors to seven (7) at any meeting of Association members. At the first meeting of Owners to elect a Board two (2) shall be elected to a three-year term, two (2) to a two-year term, and one (1) to a one-year term. As the terms of Directors expire, new Directors 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 Directors 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 Director they were appointed to replace.

**10.14 Indemnification.** The Owners shall indemnify and hold harmless any person who is or was a Director, officer, or member of the ACC of the Association, his heirs and personal representatives, from and against all personal liability and all expenses, including attorney's fees, incurred, imposed, or arising out of or in settlement of any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, instituted by any one or more Owners, or any other persons or entities, arising from present or prior service in such capacity, other than to the extent, if any, that such liability or expense shall be attributable to willful misconduct or bad faith, provided that in the case of any settlement, the Board shall have approved the settlement, which approval is not to be unreasonably withheld. Such right of indemnification shall not be deemed exclusive of any other rights to which any such person may be entitled as a matter of law, by agreement, by vote of the Board or otherwise. The indemnification as contained herein shall be paid by the Association on behalf of the Owners and shall be assessed and collectible from the Owners, on a pro rata basis in accordance with the number of votes of each Owner (except that for such purpose, Class B votes shall not be counted).

**10.15 Board Meetings, Quorum, Board Action.** The Board may establish its rules for meetings, whether regular or special. A majority of current Board members shall constitute a quorum. The action of a majority of those Directors attending a meeting at which a quorum is present shall be

sufficient to constitute the action of the Board. Action by consent shall require the unanimous consent of all current Directors.

## ARTICLE XI

### BYLAWS - DUTIES AND POWERS OF THE ASSOCIATION

11.01 **Duties of the Association.** Without limiting any other duties which may be imposed upon the Association by its Articles of Incorporation, Bylaws, or the Declaration, the Association shall have the obligation and duty to do and perform each and every one of the following for the benefit of the Owners and the maintenance and improvement of the Property:

- (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, whether by Declarant or by others, provided the same is free and clear of liens and encumbrances.
- (c) The Association shall maintain, repair, replace and landscape the Common Areas.
- (d) To the extent not assessed to or paid by the Owners directly, the Association shall pay all real property taxes and Assessments levied upon any portion of the Common Areas, provided that the Association shall have the right to contest or compromise any such taxes or Assessments.
- (e) The Association shall obtain and maintain in force the policies of insurance required of it by the provisions of the Declaration.
- (f) The Association may employ a responsible corporation, company, partnership, firm, person, or other entity as the Managing Agent to manage and control the Common Areas, subject at all times to direction by the Board, with such administrative functions and powers as shall be delegated to the Managing Agent by the Board. The compensation of the Managing Agent shall be reasonable as specified by the Board. Any agreement appointing a Managing Agent shall be terminable by either party, with or without cause and without payment of any termination fee, upon thirty (30) days' written notice thereof; and the term of any such agreement may not exceed one (1) year, renewable by agreement of the parties for successive periods of one (1) year each. Any Managing Agent may be an agent or employee of the Association or an independent contractor, as the Board deems appropriate.

11.02 **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, Parking Strip, 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, the ACC, and the Owners;

(iii) Such utility services related to the Common Areas 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; and

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

**11.03 Association Rules.** The Board from time to time, subject to and not inconsistent with the provisions of the Declaration or the Bylaws, may adopt, amend, repeal, and enforce reasonable rules and regulations governing, among other things: (a) the use of the Common Areas; (b) the collection and disposal of refuse; (c) uses and nuisances pertaining to the Property or the Development; and (d) all other matters concerning the use and enjoyment of the Property and the conduct of Owners and their invitees within the Development.

**11.04 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 XII

### BYLAWS - ASSESSMENTS

**12.01 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 Assessments, 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.

**12.02 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 and any entryway signage for the Development. The use made by the Association of funds obtained from Assessments may include, but shall not be limited to, payment of the cost of: taxes and insurance on the Common Areas; maintenance, repair, and improvement of the Common Areas; establishment and funding of a reserve to cover major repair or replacement of any 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.

**12.03 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 cost of those items set forth in Section 12.02 above.

**12.04 Annual Budget.** Annual Assessments shall be determined on the basis of a fiscal year beginning January 1 and ending December 31 next following; provided that the first fiscal year shall begin on the date of recording of this Declaration. On or before December 15 of each fiscal year, the Association shall prepare and furnish to each Owner an operating budget for the upcoming fiscal year. The operating budget for the first fiscal year shall be prepared and furnished to each Owner within thirty (30) days of such Owner's initial purchase. The budget shall itemize the estimated cash requirements for such fiscal year, anticipated receipts, reserves, and any deficit or surplus from the prior operating period. The budget shall serve as the supporting document for the annual Assessments for the upcoming fiscal year and as the major guideline under which the Development shall be operated during such annual period.

**12.05 Notice and Payment of Annual Assessments.** The Association shall notify each Owner as to the amount of the annual Assessment against the Owner's 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 quarterly installments, each such installment due on the first day of each calendar quarter during the fiscal year to which the Assessment relates; provided, however, the annual Assessments for the fiscal period ending December 31, 2000, shall be based upon such portion of the calendar year 2000 as follows the date of recording of the Declaration and shall be payable in such installments and at such times as the Association, in the sole discretion of the Board, may determine. The failure of the Association to give timely notice of any annual Assessment as provided herein shall not be deemed a waiver of or modification in any respect of the provisions of the Declaration, or a release of any Owner from the obligation to pay such Assessment or any other Assessment; but the date when the payment shall become due in such case shall be deferred to a date fifteen (15) days after notice of such Assessment shall have been given to the Owner in the manner provided in the Declaration.

12.06 **Initial Fees.** In addition, each Owner (other than Declarant), shall be required to prepay at the time of purchase of his Residence, whether as a first time or subsequent Owner, a sum equal to twice the then annual Assessment, which sum shall be in addition to any pro-ration 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.

12.07 **First Annual Assessment.** Until January 1 of the calendar year immediately following the conveyance of the first Lot to an Owner, the maximum annual Assessment shall be \$150.00 per Lot.

12.08 **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. Written notice setting forth the purpose of such meeting shall be sent to all Owners at least ten (10) but not more than thirty (30) days prior to the meeting date.

12.09 **Uniform Rate of Assessment.** All monthly and special Assessments authorized by Sections 12.03 and 12.08, respectively, shall be fixed at a uniform rate for all Lots; provided, however, that until a Lot has been both fully improved with a Residence and occupied for the first time for residential purposes, the monthly and special Assessments applicable to such Lot shall not be due and payable. During the period of time that Declarant holds the Class B membership in the Association if assessed fees collected by the Association fail to adequately meet Association expenses, then Declarant shall pay any shortfall.

12.10 **Quorum Requirements.** The quorum at any Association meeting required for any action authorized by Section 12.08, above, shall be as follows: At the first meeting called, the presence of Owners or of proxies entitled to cast sixty percent (60%) of the total votes of the Class A membership shall constitute a quorum. If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called (subject to the notice requirements set forth in Section 12.08, above) 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 less than forty-eight (48) hours nor more than forty-five (45) days following the immediately preceding meeting.

12.11 **Reimbursement Assessment on Specific Lot.** In addition to the annual Assessment and any special Assessment authorized pursuant to Section 12.08, above, the Board may levy at any time Reimbursement Assessments (a) on every 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 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 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.

**12.12 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.

**12.13 Effect of Nonpayment; Remedies.** Any Assessment (whether annual, special, or Reimbursement Assessment) not received within ten (10) days of the date on which it becomes due shall be subject to a late charge not to exceed 5% thereof, which together with interest and costs of collection shall be, constitute, and remain a continuing lien on the affected Lot. If any Assessment is not received within ten (10) days after the date on which it becomes due, the amount thereof shall also bear interest from the due date at the rate of one percent (1%) per month; and the Association may bring an action against the Owner who is personally liable therefor or may 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. Failure of the Association to promptly enforce any remedy granted pursuant to this Section 12.13 shall not be deemed a waiver of any such rights.

**12.14 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 instalment 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 instalment thereafter becoming due.

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

### ARTICLE XIII

#### MISCELLANEOUS

**13.01 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 Director of the Association. Any notice required or permitted to be given to the ACC may be given by delivering or mailing the same to the Managing Agent or the Association or any member of the ACC.

**13.02 Amendment.** Except as provided below, this Declaration may be amended by, but only by, an instrument recorded in the Public Records, which is executed by Owners (including Declarant) who collectively hold at least sixty percent (60%) of the total outstanding votes in the Association. The foregoing right of amendment shall, however, be subject to the right to supplement this Declaration in the manner and to the extent provided for in Article III of this Declaration. However, 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) shall be accomplished or effective unless the instrument through which such amendment is purported to be accomplished is consented to in writing by Declarant.

**13.03 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 13.03:

(a) All necessary consents must be obtained prior to the expiration of ninety (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.

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

**13.05 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.

**13.06 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.

**13.07 Covenants to Run with Land.** This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Declarant, all parties who heretofore acquired or hereafter acquire any interest in a Lot, their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or occupant of a Lot or Residence 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



**EXHIBIT A**

to

**Declaration of Protective Easements,  
Covenants, Conditions and Restrictions**

**Carter Crossing Subdivision**

**City of Provo, Utah County, Utah**

**Legal Description**

EXHIBIT A

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CARTER CROSSING

BEGINNING AT A POINT LOCATED N. 89°17'19" E. ALONG THE SECTION LINE, 142.77 FEET FROM THE NORTH 1/4 CORNER OF SECTION 10, TOWNSHIP 7 SOUTH, RANGE 2 EAST, SALT LAKE BASE & MERIDIAN; THENCE AS FOLLOWS;

THENCE N. 01°00'00" E. 194.93 FEET; THENCE S. 89°00'00" E. 1.02 FEET; THENCE N. 01°00'00" E. 39.96 FEET; THENCE S. 89°51'25" E. 332.88 FEET; THENCE N. 06°18'30" E. 58.20 FEET; THENCE N. 87°07'30" E. 345.67 FEET; THENCE S. 00°58'44" E. 3.50 FEET; THENCE S. 01°55'42" W. 26.13 FEET; THENCE S. 00°01'12" W. 94.80 FEET; THENCE S. 00°29'32" W. 538.89 FEET; THENCE N. 89°52'16" W. 490 FEET; THENCE S. 00°29'32" W. 113.43; FEET; THENCE N. 89°00'00" W. 201.28 FEET; THENCE N. 01°00'00" E. 462.97 FEET TO THE POINT OF BEGINNING, CONTAINING 10.32 ACRES OF LAND.