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KATIE L. DIXON
RECORDER, SALT LAKE COUNTY, UTAH
GAFCO IN
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REC BY: SHARON WEST , DEPUTY

DECLARATION OF THE
BIRCH POINT PLANNED UNIT DEVELOPMENT PROJECT
(An Expandable Planned Unit Development)

This Declaration of Planned Unit Development, hereinafter referred to as the "Declaration" is made and executed this fifteenth day of October, 1991, by GAFCO, Inc., a Utah corporation, hereinafter referred to as the "Declarant."

RECITALS:

A. Description of Land. The Declarant is the owner of the following-described parcel of land, hereinafter referred to as the "Land," which is located in the County of Salt Lake, State of Utah:

Beginning at a point on the south line of 5290 South Street which is South 89°47'55" West 347.210 feet, North 00°07'00" East 236.240 feet, North 89°36'00" West 339.150 feet, North 483.650 feet and North 88°16'21" West 238.00 feet from the Southeast corner of Saction B, Township 2 South, Range 1 East, Salt Lake Base and Meridian, and running thence North 88°16'21" West 347.420 feet; thence South 44.329 feet; thence South 10°00'00" East 115.485 feet; thence South 53°45'00"; East 17.555 feet; thence South 13.585 feet; thence East 307.010 feet; thence North 27.803 feet; thence North 01°45'00" East 145.000 feet to the point of beginning (Containing 1.3638 acre)

B. Buildings and Improvements. The Declarant has constructed or will construct on the Land certain Buildings and other Improvements as shown on the Map referred to below.

C. Record of Survey Map. The Declarant intends to execute, acknowledge and record in the office of the County Record of Salt Lake County, State of Utah, a certain instrument pertaining to the Project and entitled "Record of Survey Map Birch Point An Expandable Planned Unit Development Project."

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D. Intent and Purpose. The Declarant intends by recording this Declaration and the Map to submit the Land, the Buildings and all other improvements situated in or upon the Land as a fee simple Planned Unit Development Project and to impose upon said property mutually beneficial restrictions under a general plan of improvement for the benefit of all Units within said Project and the Owners thereof.

NOW, THEREFORE, the Declarant does hereby make the following declaration:

ARTICLE I

DEFINITIONS

1.01 Defined Terms. Unless the context clearly indicates otherwise, certain terms as used in this Declaration shall have the meanings set forth in this Article I.

1.02 "Association" shall mean Birch Point Home Owners Association, a Utah nonprofit corporation, organized to be the Association referred to herein.

1.03 "Board of Trustees" shall mean the governing board of the Association which constitutes the management committee appointed or elected in accordance with the Declaration and in accordance with the Articles of Incorporation and Bylaws of Birch Point Association Inc., attached hereto as Exhibit "B" and Exhibit "C" respectively, and incorporated hereinby this reference.

1.04 "Buildings" shall mean two Buildings in the Project containing one or more Units that have been or will be constructed on the Land, as such Buildings are shown on the Map.

1.05 "Common Areas" shall mean all physical portions of the Project except the Units.

1.06 "Common Expenses Fund" shall mean the fund created or to be created pursuant to the provisions of Article VIII of this Declaration and into which all monies of the Association shall be deposited.

1.07 "Common Facilities" shall mean all furniture, furnishings, equipment, facilities and other property (real, personal or mixed) and interests therein at any time leased, acquired, owned or held by the Association for the use and benefit of the Owners and all other property (real, personal or mixed) hereafter purchased in accordance with this Declaration with monies from the Common Expense Fund. Common Facilities shall be deemed to be part of the Common Areas, except to the extent otherwise expressly provided in this Declaration.

1.08 "Unit" shall mean the building and the land they occupy and the undivided interest (expressed as a percentage of the entire ownership interest) in the Common Areas appurtenant to such Unit, as set forth in Exhibit "A" attached hereto and by this reference made a part thereof.

1.09 "Additional Land" shall mean the real property described in Section 10.02 which has not yet been submitted to the provisions of the Act but which may hereafter be added as a whole or in part to the Project as provided in Article X and the Act.

1.10 "Declarant" shall mean GAFCD, Inc., a Utah corporation and its successors and assigns.

1.11 "FHA" shall mean the Federal Housing Administration.

1.12 "FHLMC" shall mean the Federal Home Loan Mortgage Corporation.

1.13 "First Mortgagee" shall mean a Mortgagee which is a bank or savings and loan association or established mortgage company, or other entity chartered under federal or state laws, any corporation or insurance company or any federal or state agency which has a first mortgage lien on any Unit in the Project.

1.14 "Eligible First Mortgagee" shall mean any First Mortgagee who has requested notice of those certain matters referred to in this Act.

1.15 "FNMA" shall mean the Federal National Mortgage Association.

1.16 "Land" shall mean the Land upon which the Project is situated, as more particularly described in Paragraph A of the recitals above, except the land upon which each Unit is located.

1.17 "Lease" shall mean any agreement for the leasing or rental of the Project.

1.18 "Common Wall" shall mean any wall that is shared by two Units and services as a fire barrier.

1.19 "Manager" shall mean the person, firm or company, if any, designated from time to time by the Association to manage, in whole or in part, the affairs of the Association and the Project.

1.20 "Map" shall mean the Record of Survey Map for the Birch Point P.U.D. Project, recorded concurrently with this Declaration, and any Supplemental Maps, of individual Units, pertaining to the Project and recorded or to be recorded in the office of the County Recorder of Salt Lake County, State of Utah.

1.21 "Mortgage" shall mean any mortgage or deed of trust by which a Unit or any part hereof is encumbered.

1.22 "First Mortgage" shall mean any first mortgage or deed of trust by which a Unit or any part thereof is encumbered.

1.23 "Mortgagee" shall mean any (i) any persons or entities named as mortgagee or beneficiary under the Mortgage or Deed of Trust by which the interest of any Owner is encumbered, (ii) any successor to the interest of such person or entity under such Mortgage or Deed of Trust or (iii) any insurer or guarantor of such person or entity under such Mortgage or Deed of Trust.

1.24 "Mortgage Insurer" shall mean FHA or VA.

1.25 "Mortgage Servicer" shall mean a Mortgagee who services any Mortgage or Deed of Trust on any individual Unit in the Project on behalf of FHLMC and/or FNMA.

1.26 "Owner" shall mean the person or persons, including the Declarant, owning in fee simple a Unit in the Project, as such ownership is shown by the records of the County Recorder of Salt Lake County, State of Utah. The term "Owner" shall not refer to any Mortgagee (unless such Mortgagee has obtained title in fee simple to a Unit pursuant to a judicial or nonjudicial action, including, without limitation, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure) or to any person or persons purchasing a Unit under contract (until such contract is fully performed and legal title conveyed of record).

1.27 "Project" shall mean the Common Land, the Units and all common improvements submitted by this Declaration and the Map to the provisions of law.

1.28 "Total Votes of the Association" shall mean the total number of votes appertaining to all Units in the Project, as shown in Exhibit "A" attached hereto.

1.29 "VA" shall mean the Veteran's Administration.

1.30 "Common Wall" shall mean a wall defined by regulations and intended to be an area separation for fire.

1.31 "P.U.D." shall mean a Planned Unit Development as defined and approved by Salt Lake County.

ARTICLE II

BUILDINGS AND IMPROVEMENTS

2.01 Buildings and Improvements. The Buildings and other improvements constructed or to be constructed on the Land are described on the Map.

2.02 Description of Units. The Map contains the Unit number, location and dimensions of the land deeded with each Unit in the Project and all other information necessary to identify each such Unit.

2.03 Description of Common Areas. The Map contains a description of the Common Areas of the Project.

2.04 Principal Construction Materials. The Buildings in the Project rest on reinforced concrete footings and foundations. The walls of the buildings are frame walls, the exterior surfaces of which are covered with brick veneer, and the interior surfaces of which are covered with gypsum board. The floors are covered with carpet, linoleum, asphalt tile or equivalent floor coverings. The Buildings are supported by wood support beams, and the roof are tile shingles.

ARTICLE III

NATURE AND INCIDENTS OF UNIT OWNERSHIP

3.01 Interior of Units. Each Owner, shall have the exclusive right to paint, repaint, tile, wax, paper, carpet or otherwise decorate the interior surfaces of the walls, ceilings, floors and doors forming the boundaries of his Unit and the surfaces of all walls, ceilings, floors and doors within such boundaries. Each Owner shall also have the right to construct partition walls, fixtures and improvements within the boundaries of his Unit; provided, however, that such partition walls, fixtures and

improvements (i) shall comply with all applicable laws, ordinances and building codes, (ii) shall not interfere with facilities necessary for the support, use or enjoyment of any other part of the Project, (iii) shall not impair the structural soundness or integrity of the Building in which it is located and (iv) shall not encroach upon the Common Areas or any part thereof, unless the Board of Trustees shall consent in writing to such encroachment.

3.02 Each Owner shall keep the exterior of his Unit, including, without limitation, roof, walls, windows, soffit, patios walkways, landscaping and permanent fixtures and appurtenances thereto, in a clean and sanitary condition and in a state of good repair. In the event that any such Unit shall develop an unsanitary or unclean or unsafe condition or fall into a state of disrepair, and in the event that the Owner of such Unit shall fail to correct such condition or state of disrepair within 30 days following written notice from the Board of Trustees, the Board of Trustees in behalf of the Association shall have the right, at the expense of the Owner and without liability to the Owner for trespass or otherwise, to enter said Unit and correct or eliminate said unsanitary or unclean condition or state of disrepair; provided, however, that the Association shall in no event have the obligation to correct or eliminate any such condition or state of disrepair.

3.03 Title. Title to a Unit within the Project may be held or owned by any person or entity, or any combination thereof, and in any manner in which title to any other real property may be held or owned in the State of Utah, including, without limitation, joint tenancy or tenancy in common.

3.04 Ownership of Common Areas. The undivided interest in the Common Areas appurtenant to each Unit in the Project shall be as set forth in Exhibit "A" attached hereto. The undivided interest appurtenant to each Unit as shown in said Exhibit "A" shall have a permanent character and shall not be altered except with the unanimous written consent of all Owners expressed in an amendment to this Declaration duly recorded. Except as otherwise provided in this Declaration, any Owner shall be entitled to nonexclusive use of the Common Areas in any manner that does not hinder or encroach upon the rights of other Owners and is not contrary to any rules and regulations promulgated by the Association.

3.05 Inseparability. Title to no part of a Unit within the Project may be separated from any other part thereof, and each Unit and the undivided interest in the Common Areas appurtenant to each Unit shall always be conveyed, devised, encumbered and otherwise affected only as a complete Unit. Every devise, encumbrance, conveyance or other disposition of a Unit, or any part thereof, shall be construed to be a devise, encumbrance, conveyance or other disposition, respectively, of the entire Unit, together with all appurtenant rights created by law or by this Declaration, including appurtenant membership in the Association as hereinafter set forth.

3.06 No Partition. The Common Areas shall be owned in common by all the Owners, and no Owner may bring any action for partition thereof.

3.07 Separate Mortgage by Owners. Each Owner shall have the right separately to mortgage or otherwise encumber his Unit. No Owner shall attempt to or shall have the right to mortgage or otherwise encumber the Common Areas or any part thereof, except the undivided interest therein appurtenant to his Unit. Any mortgage or other encumbrance of any Unit within the Project shall be subordinate to all of the provisions of this Declaration, and in the event of foreclosure the provisions of this Declaration shall be binding upon any owner whose title is derived through foreclosure by private power of sale, judicial foreclosure or otherwise.

3.08 Separate Taxation. Each Unit within the Project, and appurtenant undivided interest in the Common Areas, shall be deemed to be a parcel and shall be assessed separately for all taxes, assessments and other charges of the State of Utah or of any political subdivision or of any special improvement district or of any other taxing or assessing authority. For purposes of such assessment, the valuation of the Common Areas shall be apportioned among the Units in proportion to the undivided interest in Common Areas appurtenant to such Units. All such taxes, assessments and other charges on each respective Unit shall be separately levied against the Owner thereof. No forfeiture or sale of any Unit for delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to any other Unit.

3.09 Mechanics Lien. No labor performed or material furnished for use in connection with any Unit with the consent or at the request of an Owner or his agent or subcontractor shall create any right to file a statement of mechanic's lien against the Unit of any other Owner not expressly consenting to or requesting the same or against any interest in the Common Areas, except the undivided interest therein appurtenant to the Unit of the Owner for whom such labor shall have been performed and such materials shall have been furnished.

3.10 Description of Unit. Every contract for the sale of a Unit and every other instrument affecting title to a Unit within the Project may describe a Unit by its identifying number or symbol as indicated in this Declaration or as shown on the Map. Such description will be construed to describe the Unit, together with its appurtenant undivided interest in the Common Areas, and to incorporate all of the rights incident to ownership of the Unit within the Project and all of the limitations on such ownership.

ARTICLE IV

EASEMENTS

4.01 Right to Ingress, Egress and Support. Each Owner shall have the right to ingress and egress over, upon and across the Common Areas as necessary for access to such Owner's Unit and such rights shall be perpetual and shall be appurtenant to and pass with title to each Unit.

4.02 Association's Right to Use Common Areas. The Association shall have an easement to make such use of the Common Areas as may be necessary or convenient to perform the duties and functions that it is obligated or permitted to perform pursuant to this Declaration, including, without limitation, the right to construct and maintain in the Common Areas facilities for use by Owners generally or by the Association and its agents exclusively.

4.03 Easement for Completion of Project. The Declarant shall have a transferable easement over and on the Common Areas for the purpose of completing construction of the Project and making improvements therein as shown on the Map and for the purpose of doing all things reasonably necessary or appropriate in connection therewith. To the extent that damage is inflicted on any part of the Project by any person utilizing said easement, the Declarant and the person causing the damage shall be liable to the Association for prompt repair of such damage.

ARTICLE V

RESTRICTIONS ON USE

5.01 Single-Family Residential Use. All Units are intended to be used for single-family residential housing purposes and are restricted to such use. There shall be no timesharing of a Unit (i.e., where the possession or occupancy of a Unit circulates among various persons during regular recurring periods of time.)

5.02 No Noxious or Offensive Activity. No noxious, destructive or offensive activity shall be carried on or placed in or upon any Unit, or in the Common areas, or any part thereof, which shall interfere with the legal rights of other Owners nor shall anything be done therein which is or may become an annoyance or nuisance to any other Owner or to any person at any time lawfully residing in the Project. No activities shall be conducted, nor improvements constructed, in or upon any part of the Project which are or may become unsafe or hazardous to any person or property. Without limiting the breadth of the foregoing, aluminum foil, newspapers, or any other similar materials may not be used to cover the windows in any Unit. The Common Areas and Facilities shall be used only in a manner which is consistent with their community nature and with use restrictions applicable to the Units. Without limiting the breadth of the foregoing sentence: (i) no automobile or other vehicle shall be parked at any location within the Project which impairs or tends to impair vehicular or pedestrian access within the Project or to and from its various parts; (ii) no radio or television antenna or any wiring for any purpose may be installed on the exterior of any Building without the prior written approval of the Board of Trustees; (iii) no garments, rugs, or other household items, or washlines of any kind may be hung, erected, or maintained outside of any Owner's Unit; and (iv) no Owner shall discard or permit to fall any items from the windows of his Unit. A Unit shall always appear to the casual observer to be a well kept residential use.

5.03 Restrictions on Signs. No signs or advertising devices of any nature, including, without limitation, commercial, political, informational or directional signs or devices, shall be erected or maintained on any part of the Project, without the prior inspection and written approval of the Board of Trustees, except as may be necessary temporarily to caution or warn of danger. If the Association consents to the erection of any such signs or devices, the same shall be removed promptly at the request of the Association.

5.04 Pets and Animals. No animals other than small household pets in reasonable numbers shall be kept or allowed in any part of the Project. The foregoing sentence shall be deemed to prohibit, inter alia, the keeping of any animal weighing more than twenty pounds and the keeping in any Unit of more than two animals less than six weeks old. Whenever a pet is allowed to leave a Unit, it shall be on a leash or in a cage.

5.05 No Alterations. No Owner shall, without the prior written consent of the Board of Trustees in each specific instance, make or cause to be made any alteration, addition, removal or improvement in or to the Common Areas, or any part thereof, or do any act that would impair the structural soundness or integrity of the Buildings or other improvements or jeopardize the safety of persons or property or impair any easement or shall have the right to landscape their own property.

5.06 No Obstructions. No Owner shall obstruct the Common Areas or any part thereof. No Owner shall store or cause to be stored in the Common Areas any property whatsoever, unless the Board of Trustees shall consent thereto in writing.

5.07 No Overloading. No Owner shall bring anything into his Unit or permit anything to be done in his Unit that will cause damage to the Buildings. No Owner shall permit the use or operation in his Unit of any equipment, machinery or other apparatus that will in any manner injure, vibrate or shake the Buildings or portions thereof.

5.08 Prohibition of Damage and Certain Activities. Except with the prior written consent of the Board of Trustees, nothing shall be done or kept in any Unit, in the Common Areas or in any other part of the Project that would result in cancellation of the insurance on the Project or any part thereof nor shall anything be done or kept in any Unit that would increase the rate of insurance on the Project or any part thereof over that which the Association, but for such activity, would pay. Nothing shall be done or kept in any Unit or in the Common Areas or any part thereof over that which the Association, but for such activity, would pay. Nothing shall be done or kept in any Unit or in the Common Areas or any part thereof which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental authority. No damage to, or waste of, the Common Areas or any part thereof shall be committed by any Owner or guest of any Owner, and each Owner shall indemnify and hold harmless the Association and the other Owners from and against all loss resulting from any such damage or waste caused by such Owner or by the guests, tenants, licensees or invitees of such Owner.

5.09 No Commercial Business. No commercial business shall be permitted within the Project.

5.10 Rules and Regulations. Each Owner shall comply strictly with all rules and regulations adopted by the Association for the governance of the Units, the Common Areas and the Project, as such rules and regulations may be modified, and amended and construed by the Association in the sole discretion of its Board of Trustees.

5.11 Construction Period Exemption. During the course of actual construction of any permitted structures or improvements within the Project, the provisions, covenants, conditions and restrictions contained in this Declaration shall be deemed waived to the extent necessary or convenient to permit such construction; provided, however, that during the course of such construction nothing shall be done which will result in a violation of any said provisions, covenants, conditions or restrictions upon completion of the construction.

ARTICLE VI

THE ASSOCIATION

6.01 The Ownership of each Unit entitled and required to be a member of the Association. Membership will begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner. The Ownership of each Unit shall determine who will be its spokesman for voting. If title to a Unit is held by more than one person the membership appurtenant to the Unit shall be shared by all such persons in the same proportionate interest and by the same type of tenancy in which title to the Unit is held. An Owner shall be entitled to one membership for each Unit owned by him. Each membership shall be appurtenant to the Unit to which it relates and shall be transferred automatically by conveyance of that Unit. Ownership of a Unit within the Project cannot be separated from membership in the Association appurtenant thereto, and any devise, encumbrance, conveyance or other disposition, respectively, of the Owner's membership in the Association and rights appurtenant thereto. No person or entity other than an Owner may be a member of the Association, and membership in the Association may not be transferred except in connection with the transfer of a Unit. The Association shall make available to the Owners, Mortgagees and the holders, insurers and guarantors of the first mortgage on any Unit current copies of the Declaration, Articles, Bylaws and other rules governing the Project and other books, records and financial statements of the Association. The Association also shall be required to make available to prospective purchasers of Units current copies of the Declaration, Articles, Bylaws, other rules governing the Project and the most recent annual financial statement of the Association, if such is prepared. "Available" shall mean available for inspection, upon request, during normal business hours or under other reasonable circumstances.

6.02 Board of Trustees. Until such time as the responsibility for electing the Trustees of the Association is turned over to the Owners in accordance with Utah law, the Declarant shall have the exclusive right to appoint and to remove all such Trustees. This exclusive right shall terminate after the first to occur of the following:

(a) Six (6) years from the date on which the first Unit in the Project is conveyed; or

(b) After seventy five percent (75%) of the Units have been completed and sold and titles conveyed.

6.03 Right of Board of Trustees to Bind Association. Until such time as the responsibility for electing the Trustees of the Association is turned over to the Owners in accordance with Section 6.02, the board of Trustees shall not have any authority to enter into any contracts, agreements or leases on behalf of the Association, either directly or indirectly, unless such contracts, agreements or leases may be terminated by the Association at any time without cause or penalty at any time after such transfer of control, upon thirty (30) days' prior written notice.

6.04 Votes. The number of votes appurtenant to each respective Unit shall be equal, as set forth in Exhibit "A". The number of votes appurtenant to each Unit as set forth in said Exhibit "A" shall have a permanent character and shall not be altered without the unanimous written consent of all Owners expressed in a duly recorded amendment to this Declaration.

6.05 Amplification. The provisions of this Article VI may be amplified by the Articles and the Bylaws; provided, however, that no such amplification shall substantially alter or amend any of the rights or obligations of the Owners set forth in this Declaration. The initial Bylaws of the Association shall be in the form of Exhibit "C".

ARTICLE VII

CERTAIN RIGHTS AND OBLIGATIONS OF THE ASSOCIATION AND BOARD OF TRUSTEES

7.01 The Common Areas. The Board of Trustees, acting on behalf of the Association and, subject to the rights and duties of the Owners as set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Areas and

all improvements thereon (including the Common Facilities) and shall keep the same in a good, clean, attractive, safe and sanitary condition, order and repair. The Board of Trustees shall also be responsible for maintenance, repair and replacement of the Common Areas including, without limitation, landings, stairways, utility lines, Common Facilities and all improvements and other items located within or used in connection with the Common Areas. The specification of duties of the Board of Trustees with respect to particular Common Areas shall not be construed to limit its duties with respect to other Common Areas. All goods and services procured by the Board of Trustees in performing its responsibilities under this section shall be paid for with funds from the Common Expense Fund.

7.02 Manager. The Board of Trustees may by written contract delegate in whole or in part to a Manager such of the duties, responsibilities, functions and powers hereunder of the Board of Trustees as are delegable. The services of any Manager retained by the Board of Trustees shall be paid for with funds from the Common Expense Fund. Appropriate fidelity bond coverage shall be required for any employee who handles funds of the Association. Any management contract, employment contract or lease of recreational or facilities, or any contract or lease, including franchises or licenses, to which the Declarant is a party which binds the Association either directly or indirectly shall provide that without cause such agreement may be terminated by the Board of Trustees or the Association, without penalty at any time after transfer or control by the Declarant, upon not more than ninety (90) days' written notice to the other party thereto. Any such agreement shall provide that it is terminable upon thirty (30) days' written notice for cause or if it is an agreement negotiated by the Declarant. The terms of any such agreement may not exceed one year, renewable by agreement of the parties for successive one year periods.

7.03 Miscellaneous Goods and Services. The Board of Trustees may, in behalf of the Association, obtain and pay for the services of such personnel as the Board of Trustees shall determine to be necessary or desirable for the proper operation of the Project, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or which it contracts. The Board of Trustees may, in behalf of the Association, obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Project or the enforcement of this Declaration. In addition to the foregoing, the Board of Trustees may, in behalf of the Association acquire and pay for out of the Common Expense Fund water, sewer, garbage collection, electrical, gas and other necessary or desirable utility services for the Common Areas (and for the Units to the extent not separately metered or billed), insurance, bonds and other goods and services common to the Units.

7.04 Real and Personal Property. The Board of Trustees may acquire and hold on behalf of the Association real, personal and mixed property of all types for the use or benefit of all of the Owners and may dispose of such property by sale or otherwise, provided that any acquisition or disposition of any real, personal or mixed property by the Board of Trustees must be approved by a vote of at least sixty six percent (66%) of the Total Votes of the Association at a meeting duly called for that purpose. All such property, including Common Facilities, shall be paid for out of the Common Expense Fund and all proceeds from the disposition thereof shall be part of such fund.

7.05 Rules and Regulations. The Board of Trustees may make reasonable rules and regulations governing the use of the Common Areas which rules and regulations shall be consistent with the rights and duties established by this Declaration. The Board of Trustees in behalf of the Association may take judicial action against any Owner to enforce compliance with such rules and regulations or other obligations of such Owner arising hereunder, or to obtain damages for noncompliance therewith, as permitted by law. In the event of such judicial action, the Association shall be entitled to recover its costs, including reasonable attorneys' fees, from the offending Owner.

7.06 Granting Easements. The Board of Trustees may, without the vote or consent of the Owners or of any other person, grant or create, on such terms as it deems advisable, easements, licenses and rights-of-way over, under, across and through the Common Areas for utilities, roads and other purposes reasonable necessary or useful for the proper maintenance or operation of the Project.

7.07 Implied Rights. The Association may exercise any right, power or privilege given to it expressly by this Declaration or by law, and every other right or privilege reasonable implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

7.08 Power of Attorney and Amendments. Each Owner makes, constitutes and appoints the Association his true and lawful attorney in his name, place and stead to make, execute, sign, acknowledge and file with respect to the Project such amendments to this Declaration and the Map as may be required by law or by unanimous Vote taken pursuant to this provision of the Declaration.

ARTICLE VIII

ASSESSMENTS

8.01 Agreement to Pay Assessments. The Declarant, for each Unit owned by it within the Project, and for and as the owner of the Project and every part thereof, hereby covenants and each Owner of any Unit by the acceptance of instruments of conveyance and transfer therefor, whether or not it be so expressed in said instruments, shall be deemed to covenant and agree with each other and with the Association to pay to the Association all assessments made by the Association for the purposes 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 Units in the Project as follows:

(a) Common Expense. Annual Assessments shall be based upon advance estimates of the Association's cash requirement to provide for the payment of all estimated expenses arising out of or connected with the maintenance and operation of the Common Areas and/or furnishing utility services and other common items to the Units. Such estimated expenses may include, without limitation, the following: Expenses of management; real property taxes and special assessments; premiums for all insurance that the Association is required or permitted to maintain hereunder; repairs and maintenance; wages for Association employees, including fees for a Manager (if any); utility charges, including charges for utility services to the Units to the extent not separately metered or billed; legal and accounting fees; any deficit remaining from a previous period; creation of an adequate contingency reserve, major maintenance reserve and/or sinking fund; creation of an adequate reserve fund for maintenance repairs, and replacement of those Common Areas that must be replaced on a periodic basis, and such reserve shall be funded by monthly payment rather than extraordinary special assessments; 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.

(b) Apportionment. Expenses attributable to the Common Areas or to the Project as a whole shall be apportioned among and assessed to all Owners in proportion to their respective undivided interests in the Common Areas. The Declarant shall be liable for the amount of any assessments against Units owned by it.

(c) Annual Budget. Annual Assessments shall be determined on the basis of a fiscal year beginning January 1 and ending December 31 next following, provided the first fiscal year shall begin on the date of this Declaration, and on or before December 15 of each year thereafter, the Board of Trustees shall prepare and furnish to each Owner, or cause to be prepared and furnished to each Owner, an operating budget for the upcoming fiscal year. The Budget shall itemize the estimated expenses of Common Expenses for such fiscal year anticipated receipts (if any) and any deficit or surplus from the prior operating period. The budget shall serve as the supporting document for the Annual Assessment for the upcoming fiscal year and as the major guideline under which the Project shall be operated during such annual period.

(d) Notice and Payment. Except with respect to the first fiscal year, the Board of Trustees shall notify each Owner as to the amount of the Annual Assessment against his or her Unit on or before December 15 each year for the fiscal year beginning on January 1 next following. Each Annual Assessment shall be payable in twelve equal monthly installments, one such installment due on the first day of each calendar month during the fiscal year to which the assessment relates; provided, however, the Annual Assessment for the first fiscal year shall be based upon such portion of the first fiscal year. All unpaid installments of any Annual Assessment shall bear interest at the rate of eighteen percent (18%) per annum from the date each such installment became due until paid. In addition, in the event that any installment Annual Assessment is not paid within fifteen (15) days of the date such installment becomes due, the Association may, at its option, and upon fifteen (15) days prior written notice to the Owner, accelerate the due date for all remaining unpaid installments of the Annual Assessment for the remainder of the fiscal year and all accrued but unpaid interest thereon. Payment of the annual assessment installments so accelerated shall be due at the expiration of said fifteen (15) 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 Board of Trustees 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 cases 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 this Declaration.

(e) Inadequate Funds. In the event that the Common Expense Fund proves inadequate at any time as a result of nonpayment of any Owner's assessment, the Board of Trustees may, on behalf of the Association, levy additional assessments in accordance with the procedure set forth in Section 8.03 below, except that the vote therein specified shall be unnecessary.

8.03 Special Assessments. In addition to the Annual Assessments authorized by this Article, the Board of Trustees may, on behalf of the Association, levy, at any time and from time to time, upon the affirmative vote of at least sixty six percent (66%) of the Total Votes of the Association, Special Assessments, payable over such periods as the Board of Trustees 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 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 of 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 in proportion to their respective undivided interests in the Common Areas. 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 fifteen (15) 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 until paid. All funds received from assessments under this section shall be part of the Common Expense Fund.

8.04 Lien for Assessments. All sums assessed to Owners of any Unit within the Project pursuant to the provisions of this Article VIII, together with penalties and interest thereon as provided herein, shall be secured by a lien on such Unit in favor of the Association. To evidence a lien for sums assessed pursuant to this Article VIII, the Board of Trustees 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 of the Unit and a description of the Unit. 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 Salt Lake County, State of Utah. No notice of lien shall be recorded until there is a delinquency in payment of assessment. Such lien may be enforced by sale or foreclosure conducted in accordance with the provisions of law applicable to the exercise of powers of sale or foreclosure of deeds of trust or mortgages or in any other manner permitted by law. In any such foreclosure, the Owner shall be

required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees), and 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 against the Unit which shall become due during the period of foreclosure, and all such assessments shall be secured by the lien being foreclosed. With one hundred percent of the Total Vote the Board of Trustees shall have the right and power in behalf of the Association to bid in at any foreclosure sale and to hold, lease, mortgage or convey the subject Unit in the name of the Association.

B.05 Personal Obligation of Owner. The amount of any Annual or Special Assessment against any Unit shall be the personal obligation of the Owner of such Unit 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 Unit 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 attorney's fees.

B.06 State of Account. Upon payment of a reasonable fee set by the Board of Trustees (but not to exceed any statutory limitation thereon) and upon written request of any Owner, Mortgagee or prospective purchaser of a Unit, the Board of Trustees shall issue a written statement setting forth the following: The amount of the unpaid assessments, if any, with respect to such Unit; the amount of the current Annual Assessment and the date or dates upon which installments thereof become due; and credit for advanced payments or prepaid items, including, without limitation, the Owner's share of prepaid insurance premiums. Such statements shall be conclusive upon the Association in favor of persons who rely thereon in good faith. In the event that the Board of Trustees fails upon written request to issue such a written statement, any unpaid assessments with respect to such Unit which became due prior to the written receipt of such written request by the Board of Trustees shall become subordinate to a lien held by the person or entity requesting such statement.

B.07 Personal Liability of Purchaser. Subject to the provisions of Section B.06, a purchaser of a Unit shall be jointly and severally liable with the seller thereof for all unpaid assessments against such Unit 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.

8.08 Reserves and Working Capital. The Association shall establish the following funds:

(a) Reserve Fund. The Association shall establish and maintain an adequate reserve fund for the periodic maintenance repair and replacement of improvements to the Common Areas the Association may be obligated to maintain. The reserve fund shall be maintained out of regular assessments for common expenses.

(b) Working Capital Fund. The Association shall also establish and maintain for the initial months of the Project, a working capital fund equal to at least two monthly installments of the Annual Assessment for each Unit. Each Unit's share of the working capital fund must be collected and transferred to the Association at the time of the closing of sale of that Unit. The working capital fund must be maintained in a segregated account for the use and benefit of the Association. The purpose of the working capital fund is to insure that the Association will have cash available to meet unforeseen expenditures or to acquire additional equipment or services deemed necessary or desirable by the Association. Amounts paid into the working capital fund are not to be considered advance payments of any regular assessments.

ARTICLE IX

INSURANCE

9.01 Types of Insurance. The Association shall obtain and keep in full force and effect at all times the following types of insurance coverage, provided by companies licensed to do business in the State of Utah:

(a) Hazard Insurance. The Association shall obtain, maintain and pay for as a Common Expense a "master" or "blanket" multi peril policy of property insurance covering only the Common Area, including, if any, without limitation, fixtures and Buildings service equipment to the extent that they are part of the Common Areas, common personal property and supplies belonging to the Association. Such a master policy of hazard insurance shall provide, as a minimum, protection against the following:

(i) Loss or damage by fire and other perils normally covered by the standard extended coverage endorsement; and

(ii) All other perils customarily covered with respect to projects similar to the Project in construction location and use, and any other perils for which coverage is commonly required by private institutional mortgage investors for such projects, including all perils normally covered by the standard "all risk" endorsement, where such is available.

The policy shall be in an amount equal to one hundred percent (100%) of the insurable value of the Common Area (based upon the current replacement cost of the property covered in the policy). Deductible may not exceed the lesser of \$10,000.00 or 1% of the applicable amount of coverage. Funds for such deductible must be included in the Association's reserves and be so designated.

(b) Public Liability Insurance. The Association shall obtain and maintain a comprehensive policy of public liability insurance covering all the Common Areas and public ways in the Project, whether or not they are leased to a third party. Such insurance policy shall contain a Severability or Interest Endorsement or equivalent coverage which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners. The scope of coverage shall include, without limitation:

(i) Legal liability of the insured for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Common Areas and legal liability arising out of law suits related to employment contracts of the Association; and

(ii) Additional coverages as may be required to include protection against such other risks as are customarily covered with respect to projects similar to the Project in construction, location and use, any other coverage in the kinds and amounts required by private institutional mortgage investors for such projects, including, but not limited to, host liquor liability, contractual and all written contract insurance, comprehensive automobile liability insurance, bailee's liability, garage keeper's liability and worker's compensation and employer's liability insurance.

(c) Fidelity Insurance or Bond. The Association shall obtain and maintain blanket fidelity bonds against dishonest acts on the part of all officers, directors, trustees, managers and employees of the Association and all other persons, including without limitation, volunteers handling or responsible for funds of or administered by the Association. Furthermore, where the Association has designated some or all of the responsibility for the handling of funds to a management agent, such bonds may be acquired for such management agent's officers, employees and agent handling or responsible for funds of, or administered on behalf of, the Association. Such fidelity bonds shall meet the following requirements:

(i) All shall name the Association as an obligee and the name insured:

(ii) All shall be based on the best business judgment of the Association and shall not be written in an amount less than one and one half times the amount of the Association's estimated annual operating expenses and reserves, or the estimated maximum of funds, including reserve funds in the custody of the Association or the Manager at any time during the term of each fidelity bond, whichever is greater. However in no event may the aggregate amount of such bonds be less than the sum equal to three months' aggregate assessments on all Units plus reserve funds:

(iii) All shall contain waivers by the issuers of the bonds or policies of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar terms or expressions or shall contain an appropriate endorsement to the policy to cover any persons who serve without compensation if the policy would not otherwise cover volunteers;

(iv) All shall provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days' prior written notice to the Association or any Insurance Trustee and each Mortgage Servicer on behalf of FNMA or FHLMC;

(v) The premiums shall all be paid by the Association as a common expense, except for premiums on fidelity bonds or insurance maintained by a management agent for its officers, employees and agents.

(d) Notwithstanding any other provisions contained herein to the contrary, the Association shall continuously maintain in effect such casualty and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for P.U.D.

development projects established by FHA, VA, FNMA and Government National Mortgage Association, so long as any of them is a Mortgagee, Mortgage Insurer or owner of a Unit within the Project, except to the extent such coverage is not available or has been waived in writing by FHA, VA, FNMA or the Government National Mortgage Association.

9.02 Insurance Policy Requirements. The Hazard, Public Liability policies obtained by the Association pursuant to Sections 9.01 (a) and (b) shall be subject to the following:

(a) The named insured under any such policies shall be set forth therein substantially as follows: "Birch Point Home Owners' Association for the use and benefit of the individual Owners (designated by name if required by law)." The policies may also be issued in the name of an authorized representative of the Association, including any Insurance Trustee with whom the Association has entered into an Insurance Trust Agreement or any successor to such trustee (each of which shall be referred to as "Insurance Trustee") for the use and benefit of the individual Owners. Loss payable shall be paid in favor of the Association (or Insurance Trustee) as a trustee for each Owner and each such Mortgagee. Each Owner and each such Owner's Mortgagee, if any, shall be beneficiaries of the policies according to the undivided interest in the Common Areas appurtenant to each Owner's respective Unit in the percentage of common ownership. Evidence of insurance shall be issued to each Owner and Mortgagee upon request;

(b) Insurance coverage obtained and maintained pursuant to the requirement of Sections 9.01 (a) and (b) shall be secondary in the event any Owner has insurance covering the same loss;

(c) Insurance coverage must not be prejudiced by an act or neglect of individual Owners when such act or neglect is not within the control of either such Owners collectively or the Association;

(d) Coverage may not be cancelled, changed in a way which is adverse to a Mortgagee or substantially reduced or modified (including cancellation for nonpayment of premium) without at least thirty (30) days' prior written notice in advance of the effective date of any reduction in or cancellation of the policy to any and all insured parties;

(e) All policies must contain a waiver of subrogation by the insurer as to any and all claims against the Association, any Owners and/or their respective agents, employees or tenants;

(f) Each hazard insurance policy shall be written by a hazard insurance carrier which has a current financial rating by Best's Insurance Reports of Class B+/VI or better or by Loyds of London even though it has no Best's rating.

(g) Policies shall be deemed unacceptable where (i) under the terms of the carrier's charter, bylaws or policy contributions or assessments may be made against the Association, an Owner, FNMA, FHLMC or any designee or FNMA or FHLMC; or (ii) by the terms of the carrier's charter, bylaws or policy loss payments are contingent upon action by the carrier's board of directors, policyholders, or members; or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent FNMA or an Owner from collecting insurance proceeds;

(h) Policies shall be in compliance with and consistent with applicable local and state insurance law. Each insurer and any reinsurer must be specifically licensed or authorized by law to transact business within the State of Utah.

9.03 Additional Coverage. The provisions of this Declaration shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage in addition to any insurance coverage required by this Declaration, in such amounts and in such forms as the Association may deem appropriate from time to time.

9.04 Owner's Own Insurance. Each Owner, at his own expense, shall procure and maintain at all times fire, liability and extended coverage insurance covering Buildings, personal property of such Owner and additional fixture and improvements added by such Owner against loss by fire and other casualties, including without limitation, vandalism and malicious mischief. All policies providing such casualty insurance shall provide that they do not diminish the insurance carrier's coverage for liability arising under insurance policies obtained by the Association pursuant to this article. Notwithstanding the provisions hereof, such Owner shall obtain insurance at his own expense providing such other coverage upon his Unit, his personal property, for his personal liability and covering such other risks as he may deem appropriate, provided that each such policy shall provide that it does not diminish the insurance carrier's coverage for liability arising under insurance policies obtained by the Association pursuant to this article. If obtainable under industry practice without an unreasonable additional charge for such waiver, all such insurance shall contain a waiver the insurance company's right of subrogation against the Association, the Declarant, the Manager, other Owners and their respective servants, agents and guests.

9.05 Review of Insurance. The Association shall review annually the coverage and policy limits of all insurance on the Project and adjust the same at its discretion. Such annual review may include an appraisal of the improvements in the Common Areas by a representative of the insurance carrier or carriers providing the policy or policies on the Project or by such other qualified appraisers as the Association may select.

9.07 Insurance Trustee, Power of Attorney. Notwithstanding anything to the contrary in this Declaration, the Hazard and Public Liability Insurance policies obtained by the Association pursuant to Section 9.01 (a) and (b) may name as an insured, on behalf of the Association, the Association's authorized representative, including any trustee with whom the Association may enter into any Insurance Trust Agreement or any successor to such trustee (each of whom shall be referred to herein as the "Insurance Trustee"). All such policies obtained by the Association must provide for recognition of any insurance Trust Agreement, and the Insurance Trustee, or such other authorized representative, shall have exclusive authority to negotiate losses under any such policy. Each Owner appoints the Association, or the Insurance Trustee (in the event a trustee is designated hereafter to represent the Association), as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: The collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association or any Insurance Trustee must hold or otherwise properly dispose of any proceeds of insurance in trust for the Owners and their first mortgage holders, as their interest may appear.

ARTICLE X

EXPANDABLE P.U.D.

10.01 Reservation of Right to Expand. The Declarant hereof expressly reserves the option and right to expand the Birch Point P.U.D. pursuant to the provisions of this Article:

(a) Consent of Owners not Required. The consent of the Owners or Mortgagees in the Project shall not be required for such expansion and the Declarant may proceed with such expansion at its sole option.

(b) Liability Insurance. Declarant shall obtain at Declarant's expense if requested to do so by any Mortgage Insurer, a liability insurance policy in the amount determined by the Mortgage Insurer, in the event and to the extent there are any guaranteed Mortgages in the Project, to cover any exposure of the Owners to any liability resulting from the expansion of the Project. The Policy shall be endorsed "as owner's interest might appear."

(c) Preparation and Recording of Supplemental Map and Amendment. Prior to adding all or any portion of the Additional Land to the Project, the Declarant shall:

(i) Pay or provide for the payment of all taxes, assessments, mechanic's liens and other charges affecting or relating to the Additional Land to be added to the Project covering any period of time prior to the date upon which such Additional Land is added to the Project;

(ii) Record, with regard to the Additional land or any portion thereof that is being added to the Project, a supplemental record of survey map (the "Supplemental Map") which shall describe the land added to the Project and comply in all respects with this Article X. The Supplemental Map shall be certified as to its accuracy and compliance with the requirements of the Act by the land surveyor who prepared or supervised the preparation thereof;

(iii) Prepare, execute and record simultaneously with the Supplemental Map an amendment to the Declaration (the Amendment") which shall contain a legal description of the land added to the Project and shall reallocate individual interest in the Common Areas so that the Units created in the land added to the Project shall be allocated undivided interests in the Common Areas on the same basis as Unit initially constructed in the Project as reflected in Exhibit "A" attached hereto. The Amendment shall assign an identifying number to each Unit, if any, formed out of the land added to the Project.

(d) Expiration of Right to Expand. This option to expand the project shall expire seven years after the recording of this Declaration; however, the Declarant may, at any time prior to the expiration of such period, terminate its option to expand by recording among the land records wherein this Declaration is recorded an executed and notarized document terminating this option.

10.02 Description of Additional Land. The Additional Land which may at the option of Declarant be made part of the Project is located in Salt Lake County, State of Utah, and is more particularly described as follows, to wit:

BK5387Pg2265

Beginning at a point which point is South 89°47'55" West 347.210 feet, North 00°07'00" East 236.240 feet, North 89°36'00" West 339.150 feet, North 217.150 feet and West 242.320 feet from the southeast corner of Section 8, Township 2 South, Range 1 East, Salt Lake Base and Meridian, and running thence North 100.940 feet; thence West 307.010 feet; thence South 100.940 feet; thence East 307.010 feet to the point of beginning.
(Containing 0.7114 acre)

10.03 Declarant's Right to Add All or Portions of Additional Land. The Declarant need not add all or any portion of the Additional Land to the Project; however, the Declarant may, at its sole discretion and without limitation, add all or any portion or portions of the Additional Land to the Project and may do so at different times.

10.04 Location of Improvements. Declarant makes no assurances as to the location of any improvements that may be made on any portions of the Additional Land added to the Project.

10.05 Maximum Number of Units. The improvements to be placed on the Additional Land shall contain no more than six residential Units; and no more than six Units per acre, including dedicated rights-of-way within the Project, may be created on any portion of the Additional Land hereafter added to the Project. The minimum number of Units to be built shall be adequate to support reasonably the Common Areas. The maximum number of Units to be built in the Project, as expanded, twelve Units, shall not overload the Common Areas. In the event the Project is fully expanded as provided herein, the minimum undivided fractional interest of each Unit in the Common Areas shall not be less than 1/12 and the maximum percent interest of each Unit in the Common Areas shall be 1/6.

10.06 Compatibility With Structures in Initial Project. Declarant intends to erect structures on any portion of the Additional Land added to the Project that will be compatible with the structures on the land initially within the Project. However, Declarant hereby reserves the right to select the design and configuration of any improvements erected on any portion of the Additional Land added to the Project that in the judgment of the Declarant may be required to achieve the best development of the Project provided that such improvements are consistent with the improvements on the land initially within the Project in terms of quality of construction. Declarant must build said improvements in accordance with an approved plan for the total development of the Project supported by detailed plats and plans.

10.07 Other Improvements. Other improvements to be placed on the Additional Land shall be limited to parking, recreational and service facilities.

10.08 Units Not Identical to Initial Units. Although Declarant intends to create Units in the improvements on the Additional Land that will be compatible with Units constructed within the Project, Declarant makes no assurances as to whether Units that may be created in the improvements on the Additional Land will be compatible with or identical to Units initially constructed within the Project.

10.09 Reservation for Residential Use. Any Portion of the Additional Land which is hereafter added to the Project and any Units created thereon shall be restricted primarily to residential purposes, including, but not limited to, both owner and tenant occupied Unit structures. Not more than 50% of the aggregate land and floor area of all of the Units that may be created on any portion of the Additional Land which is hereafter added to the Project shall be used for any purpose other than for residential purposes.

10.10 Votes and Common Expenses. The Owners of the Units created within any portion of the Additional Land that is added to the Project shall be entitled to vote the votes in the Association appurtenant to each such Unit. Each additional Unit that is added to the Project shall be allocated an undivided fractional interest in the Common Areas equal to the undivided fractional interest allocated to each other Unit in the Project, as expanded. For example, if the Project, as expanded, ultimately includes twelve Units, each of the twelve Units in the Project will be allocated a fractional undivided interest in the Common Areas equal to 1/12. Expenses attributable to the Common Expense or to the Project as a whole shall be apportioned among and assessed to the existing Owners and to the Owners of the Additional Units in proportion to their respective undivided interests in the Common Areas of the Project, as expanded.

ARTICLE XI

COMPLIANCE WITH DECLARATION AND BYLAWS

11.01 Compliance. Each Owner shall comply strictly with the provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association, rules and regulations promulgated by the

Association and the decisions and resolutions of the Association adopted pursuant thereto, as the same may lawfully be modified and amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due for damages or for injunctive relief or for both, maintainable by the Association or, in a proper case, by an aggrieved Owner.

11.02 Enforcement and Remedies. The obligations, provisions, covenants, restrictions and conditions contained in this Declaration, or in any Supplemental or Amended Declaration, with respect to the Association or Units within the Project shall be enforceable by the Declarant or by any Owner of a Unit within the Project, subject to this Declaration, by a proceeding for a prohibitive or mandatory injunction or by a suit or action to recover damages or to recover any amount due or unpaid. The obligations, provisions, covenants, restrictions and conditions contained in this Declaration, or in any supplemental or Amended Declaration, with respect to a person or entity or property of a person or entity other than the Association shall be enforceable by the Declarant or by the Association or, in a proper case, by an aggrieved Owner by a proceeding for a prohibitive or mandatory injunction or by a suit or action to recover damages or to recover any amount due or unpaid. No summary abatement or similar procedure may be utilized through nonjudicial means to alter or demolish items of construction.

ARTICLE XII

GENERAL PROVISIONS

12.01 Intent and Purpose. The provisions of this Declaration, and any Supplemental or Amended Declaration, shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of a P.U.D. Project. Failure to enforce any provision, restriction, covenant or condition contained in this Declaration, or in any Supplemental or Amended Declaration, shall not operate as a waiver of any such provision, restriction, covenant or condition or of any other provisions, restrictions, covenants or conditions.

12.02 Construction. The provisions of this Declaration shall be in addition and supplemental to the provisions of the law. Whenever used herein, unless the context shall otherwise require, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof and any gender

shall include both genders. The article and section headings set forth herein are for convenience and reference only and are not intended to expand, limit or otherwise affect the meaning or interpretation of this Declaration or any provision hereof. The provisions hereof shall be deemed independent and several, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provisions hereof.

12.03 Notices and Registration of Mailing Address. Each Owner shall register from time to time with the Association his current mailing address. All notices, demands and other communications to any Owner as provided for in this Declaration shall be in writing and shall be sufficient for all purposes if personally served or if sent by first-class U.S. mail, postage prepaid, addressed to the Owner at his registered mailing address or, if no address has been registered, to the Unit of such Owner. All notices, demands and other communications to the Association as provided for in this Declaration shall be in writing and shall be sufficient for all purposes if personally served or if sent by first-class U.S. mail, postage prepaid, addressed to the Association at its office which address the Association shall hereinafter specify to the Owners in writing. Any notice, demand or communication referred to in this Declaration shall be deemed to have been given and received when personally served or when deposited in the U.S. mail, postage prepaid, and in the form provided for in this section, as the case may be.

12.04 Audit. Any Owner may at any reasonable time, upon appointment and at his own expense, cause an audit or inspection to be made of the books and records maintained by the Association. The Association, upon prior written approval of all Owners and at the expense of the Common Expense Fund, may obtain an audit, by certified public accountants, of all Financial Statements, books and records pertaining to the Project at no greater than annual intervals, and copies thereof shall be furnished to the Owners.

12.05 Amendment. Except as otherwise provided herein, this Declaration may be amended if Owners holding at least one hundred percent (100%) of the Total Votes in the Association consent and agree to such amendment by instruments which are duly recorded in the office of the County Recorder of Salt Lake County, State of Utah.

12.06 Effective Date. This Declaration shall take effect upon recording.

12.07 Agent for Service. The name and address of the person to receive service of process in all cases provided by the law shall be the registered agent and address of the Association as shown on the official corporate records maintained in the office of the Secretary of State of the State of Utah. On the date of this Declaration, the registered agent of the Association is Ernest T. Glezos, whose address is 1111 South 3200 West, Salt Lake City, Utah 84104.

12.08 Limitation on Association's Liability. The Association shall not be liable for any failure of water service or other utility service (if any) to be obtained and paid for by the Association hereunder, or for injury or damage to any person in or upon the Project, or resulting from electricity, water, rain, snow or ice which may leak or flow from outside or from any parts of the Buildings or their drains, pipes, conduits, appliances or equipment, or from any place, unless caused by the grossly negligent or willful misconduct of the Association. No diminution or abatement of any assessments under this Declaration shall be claimed or allowed for inconvenience or discomfort arising from the making of any repairs or improvements to or maintaining the Project or any part thereof, or from any action taken to comply with the provisions of this Declaration or with the laws, ordinances, regulations, rules or order of any governmental authority.

12.09 Owner's Obligations. All obligations of an Owner, under and by virtue of the provisions contained in this Declaration shall continue, notwithstanding that he may be leasing, renting or selling under contract his Unit. The Owner of a Unit within the Project shall have no obligation for expenses or other obligations accruing after he conveys such Unit.

12.10 Model Units, Sales Office and Advertising Signs. Declarant and Declarant's duly authorized agents, representatives and employees shall have the right to establish and maintain model units and sales offices on the Land within the Project and the right to use such model units and sales offices during the period that Units in the Project remain unsold. Declarant further reserves the right to maintain advertising signs on the Project and to place the same in any location and to relocate, replace and remove the same at the sole discretion of Declarant during the period until the Units in the Project have been sold.

12.11 Termination. In addition to the prior written approval of one hundred percentage of Eligible First Mortgagees, the Total Votes in the Association shall be required before the Project may be abandoned or terminated, except as provided by law and in this Declaration in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration the day and year first above written.

DECLARANT:

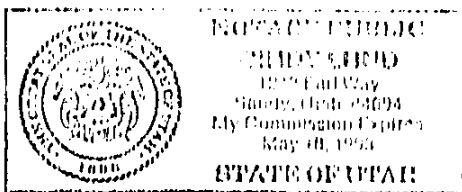
GAFCO, Inc.,
a Utah Corporation

By *Steven T Glezos*
Steven T Glezos
President

Ernest T Glezos
Ernest T Glezos
Secretary

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

On the 26th day of October, 1991, personally appeared before me Steven T Glezos and Ernest T Glezos, who being by me duly sworn did say, that they the said Steven T Glezos and Ernest T Glezos are the President and Secretary of Birch Point Home Owners Association a Utah Corporation, and that the said instrument was signed in behalf of said Corporation by authority of its Articles of Incorporation and Steven T Glezos and Ernest T Glezos duly acknowledge to me that said Corporation executed the same.



Cheryl Wood
Notary Public, Residing In:
Sandy, Utah

My Commission Expires:

May 18, 1993

BK 6387F62271

EXHIBIT "A"

(Attache to and forming a part of the Declaration of The Birch Point Planned Unit Development Project, a Utah Planned Unit Development Project.)

UNITS, UNDIVIDED OWNERSHIP INTERESTS AND VOTES

<u>UNIT</u>	<u>BUILDING</u>	<u>UNDIVIDED OWNERSHIP INTERESTS (FRACTION)*</u>	<u>VOTE</u>
1	A	1/6	1
2	A	1/6	1
3	A	1/6	1
4	B	1/6	1
5	B	1/6	1
6	B	1/6	1

* All Units in the Project have been allocated equal Undivided Ownership Interests as shown above.

BK 6387 PG 2272

EXHIBIT "B"

ARTICLES OF INCORPORATION
OF
BIRCH POINT HOME OWNERS ASSOCIATION
A Utah Nonprofit Corporation

Ernest T Glezos, the undersigned natural person over the age of twenty-one years, acting as incorporator of a nonprofit corporation pursuant to the Utah Nonprofit Corporation and Cooperative Association Act, hereby adopts the following Articles of Incorporation for such nonprofit corporation.

ARTICLE I
NAME

The name of the nonprofit corporation is Birch Point Home, Owners Association hereinafter referred to as the "Association."

ARTICLE II
DEFINITIONS

Except as otherwise provided herein or as may be required by the context, all terms defined in Article I of the Declaration of Planned Unit Development for the Birch Point P. U. D. Project, a Utah P. U. D. Project, hereafter referred to as the "Declaration," shall have such defined meanings when used in these Articles of Incorporation.

ARTICLE III

DURATION

The Association shall exist perpetually or until dissolved pursuant to law.

ARTICLE IV

PURPOSES

The Association is organized as a nonprofit corporation and shall be operated exclusively for the purpose of maintaining, operating and governing the Birch Point Planned Unit Development Project, hereinafter referred to as the "Project", which is located upon the following described real property in the County of Salt Lake, State of Utah:

Beginning at a point on the south line of 5290 South Street which is South 89°47'55" West 347.210 feet, North 00°07'00" East 236.240 feet, North 89°36'00" West 339.150 feet, North 483.650 feet and North 88°16'21" West 238.00 feet from the Southeast corner of Section 8, Township 2 South, Range 1 East, Salt Lake Base and Meridian, and running thence North 88°16'21" West 347.420 feet; thence South 44.329 feet; thence South 10°00'00" East 115.485 feet; thence South 53°45'00"; East 19.555 feet; thence South 13.585 feet; thence East 307.010 feet; thence North 27.803 feet; thence North 01°45'00" East 145.000 feet to the point of beginning
(Containing 1.3638 acre)

The Association is organized and shall be operated to perform the functions and provide the services contemplated in the Declaration, which document is to be recorded in the office of the County Recorder of Salt Lake County, State of Utah. No dividend shall be paid and no part of the net income of the Association, if any, shall be distributed to the members, trustees or officers of the Association, except as otherwise provided herein, in the Declaration or under Utah law.

ARTICLE V

POWERS

Subject to the purposes declared in Article IV above and any limitations herein expressed, the Association shall have and may exercise each and all of the following powers and privileges:

(a) The power to do any and all things that the Association is authorized or required to do under the Declaration, as the same may from time to time be amended, including, without limiting the generality of the foregoing, the specific power to fix, levy and collect the charges and assessments provided for in the said Declaration;

(b) The power to purchase, acquire, own, hold, lease, mortgage, sell and dispose of any and all kinds and character of real, personal and mixed property (the foregoing particular enumeration in no sense being used by way of exclusion or limitation) and, while owner of any of the foregoing, to exercise all rights, powers and privileges appertaining thereto; and

(c) The power to do any and all things that a nonprofit corporation may now or hereafter do under the laws of the State of Utah.

ARTICLE VI

MEMBERSHIP

The members of the Association shall be all of the record Owners of Units in the Project, as such Owners are shown on the records of the County Recorder of Salt Lake County, State of Utah. The term record owner shall not include any mortgagee, trustee or beneficiary under any mortgage, trust deed or other security instrument by which a Unit or any part thereof is encumbered (unless such mortgagee, trustee or beneficiary has acquired title for other than security purposes by means of judicial or nonjudicial action, including, without limitation, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure) nor shall it include persons or entities purchasing a Unit under contract (until such contract is fully performed and legal title conveyed). If record ownership of a Unit in the Project is jointly held, the membership appertaining to such Unit shall also be jointly held. Each membership in the Association shall be appurtenant to and shall not be separated

from the Unit to which it relates. No person or entity other than an Owner of a Unit in the Project may be a member of the Association.

ARTICLE VII
MEMBERSHIP CERTIFICATES

The Association may issue certificates of membership, but such certificates shall not be necessary to evidence membership in the Association. Membership in the Association shall begin immediately and automatically upon becoming a record owner of the Unit to which such membership pertains and shall cease immediately and automatically upon an Owner ceasing to be a record owner of such Unit.

ARTICLE VIII
VOTING RIGHTS

All voting rights of the Association shall be exercised by the members, each membership being entitled to the number of votes relating to the Unit appertaining to such membership, as set forth in the Declaration. If a membership is jointly held, any or all holders thereof may attend any meeting of the members where membership is jointly held by two individuals, and such holders must act unanimously to cast the votes relating to their joint membership. Where three or more jointly hold the membership, such holders shall cast the votes relating to such membership as the majority of said holders shall agree amongst themselves. Any designation of a proxy to act for joint holders of a membership must be signed by all such holders. With respect to matters to be voted upon by the members as provided in the Declaration, the voting requirements and proportions shall be as set forth in the Declaration. Cumulative voting is not permitted.

ARTICLE IX

ASSESSMENTS

Members of the Association shall be subject to assessments by the Association from time to time in accordance with the provisions of the Declaration and shall be liable to the Association for payment of such assessments. Members shall not be individually or personally liable for the debts or obligations of the Association. However, the foregoing in no way relieves the members of their personal liability on the assessments as such assessments are assessed from time to time against their individual Units.

ARTICLE X

PRINCIPAL OFFICE AND REGISTERED AGENT

The address of the initial principal office of the Association is 1111 South 3200 West, Salt Lake City, Utah 84014, and the name of the initial registered agent of the Association at such address is Ernest T Glezos.

ARTICLE XI

BOARD OF TRUSTEES

The affairs of the Association shall be managed by a Board of Trustees, consisting of not less than three (3) or more than nine (9) Trustees, as prescribed in the Bylaws. Until such time as the responsibility for electing the Trustees of the Association is turned over to the members in accordance with Utah law and the Declaration. The Declarant or its successors or assigns shall have the exclusive right to appoint and remove such Trustees. Except for Trustees appointed as herein provided, Trustees must be members of the Association. The number of trustees constituting the initial Board of Trustees shall be two (2). The names and addresses of the persons who are to serve on the initial Board of Trustees until the first annual meeting of the Association and until the successors of such trustees are elected and shall qualify are as follows:

<u>NAME</u>	<u>ADDRESS</u>
Ernest T Glezos	1111 South 3200 West Salt Lake City, Utah 84104
Steven T Glezos	1111 South 3200 West Salt Lake City, Utah 84104

ARTICLE XII

MANAGER

The Board of Trustees may by written contract delegate to a professional management organization or individual some of its managerial duties, responsibilities, functions and powers as are properly delegable.

ARTICLE XIII

BYLAWS, RULES AND REGULATIONS

The Board of Trustees may adopt, amend, repeal and enforce Bylaws and reasonable rules and regulations governing the operation of the Association and the operation and use of the Project, to the extent that the same are not inconsistent with these Articles of Incorporation or the Declaration.

ARTICLE XIV

INCORPORATOR

The name and address of the incorporator of the Association is as follows:

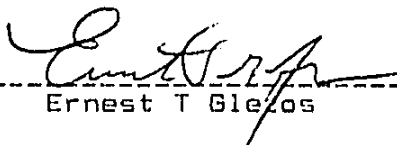
Ernest T Glezos	1111 South 3200 West Salt Lake City, Utah 84104
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ARTICLE XV
AMENDMENTS

Except as otherwise provided by the law or by the Declaration, these Articles of Incorporation may be amended by one hundred percent (100%) of the Total Votes of the Association.

DATED this fifteenth day of October, 1991.

INCORPORATOR AND
REGISTERED AGENT:



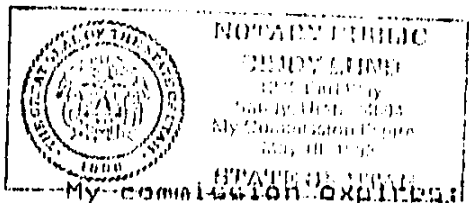
Ernest T Glezos


VERIFICATION

STATE OF UTAH)
) SS.
COUNTY OF SALT LAKE)

On this 16th day of October, 1991, personally appeared before me Ernest T Glezos, who being by me duly sworn did say that he is the incorporator and registered agent of the Birch Point Home Owners Association that he signed the foregoing Article of Incorporation of the Birch Point Home Owners Association as incorporator of such nonprofit corporation, and that the statements contained are true and correct.

IN WITNESS WHEREOF, I have hereunto set my hand this 16th day of October, 1991.





NOTARY PUBLIC
Residing at Sandy, Utah

May 18, 1993

EXHIBIT "C"

BYLAWS

OF

BIRCH POINT HOME OWNERS ASSOCIATION

A Utah Nonprofit Corporation

Pursuant to the provisions of the Utah Nonprofit Corporation and Co-operative Association Act, The Board of Trustees of Birch Point Home Owners Association, a Utah nonprofit corporation, hereby adopts the following Bylaws for such nonprofit corporation.

ARTICLE I

NAME AND PRINCIPAL OFFICE

1.01 Name. The name of the nonprofit corporation is Birch Point Home Owners Association, hereinafter referred to as the "Association".

1.02 Offices. The initial principal office of the Association shall be at 1111 South 3200 West, Salt Lake City, Utah 84104.

ARTICLE II

DEFINITIONS

2.01 Definitions. Except as otherwise provided herein or as may be required by the context, all terms defined in Article I of the Declaration of Planned Unit Development (hereinafter referred to as the "Declaration") for the Birch Point P.U.D. Project, a Utah P.U.D. Project (hereinafter referred to as the "Project"), shall have such defined meanings when used in these Bylaws.

ARTICLE III

MEMBERS

3.01 Annual Meetings. The annual meeting of members shall be held on the first Tuesday of September of each year at the hour of 7:00 o'clock p. m., beginning with the year following the year in which the Articles of Incorporation are filed, for the purpose of electing Trustees and transacting such other business as may come before the meeting. If the Election of Trustees shall not be held on the day designated herein for the annual meeting of the members, or at any adjournment thereof, the Board of Trustees shall cause the election to be held at a special meeting of the members to be convened as soon thereafter as may be convenient. The Board of Trustees may from time to time by resolution change the date and time for the annual meeting of the members.

3.02 Special Meetings. Special meetings of the members may be called by the Board of Trustees, the President or upon written request of three members, such written request to state the purpose or purposes of the meeting and to be delivered to the Board of Trustees or the President.

3.03 Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place in Salt Lake County, State of Utah, as may be designated by the Board of Trustees and stated in the notice of the meeting.

3.04 Notice of Meetings. The Board of Trustees shall cause written or printed notice of the time, place and purposes of all meetings of the members (whether annual or special) to be delivered, not more than fifty nor less than ten days prior to the meeting, to each member of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the U. S. mail addressed to the member at his registered address, with first class postage thereon prepaid. Each member shall register with the Association such member's current mailing address for purposes of notice hereunder. Such registered address may be changed from time to time by notice in writing to the Association. If no address is registered with the Association, a member's Unit address shall be deemed to be his registered address for purposes of notice hereunder.

3.05 Members of Record. Upon purchasing a Unit in the Project, each Owner shall promptly furnish to the Association a certified copy of the recorded instrument by which ownership of such Unit has been vested in such Owner, which copy shall be maintained in the records of the Association. For the purpose of determining members entitled to notice of or to vote at any

meeting of the members, or any adjournment thereof, the Board of Trustees may designate a record date, which shall not be more than fifty nor less than ten days prior to the meeting, for determining members entitled to notice of or to vote at any meeting of the members. If no record date is designated, the date on which notice of the meeting is mailed shall be deemed to be the record date for determining members entitled to notice of or to vote at the meeting. The persons or entities appearing in the records of the Association on such record date as the owners of record of Units in the Project shall be deemed to be the members of record entitled to notice of and to vote at the meeting of the members.

3.06 Quorum. At any meeting of the members, the presence of members holding, or holders of proxies entitled to cast, more than fifty one percent (51%) of the Total Votes of the Association shall constitute a quorum for the transaction of business. In the event a quorum is not present at a meeting, the members present (whether represented in person or by proxy), though less than a quorum, may adjourn the meeting to a date no later than seven (7) days from the date of the originally scheduled meeting. Notice thereof shall be delivered to the members as provided above. At the reconvened meeting, the members and proxy holders present shall constitute a quorum for the transaction of business.

3.07 Proxies. At each meeting of the members, each member entitled to vote shall be entitled to vote in person or by proxy; provided, however, that the right to vote by proxy shall exist only where the instrument authorizing such proxy to act shall have been executed by the member himself or by his attorney thereunto duly authorized in writing. If a membership is jointly held, the instrument authorizing a proxy to act must have been executed by all holders of such membership or their attorneys thereunto duly authorized in writing. Such instrument authorizing a proxy to act shall be delivered at the beginning of the meeting to the Secretary of the Association or to such other officer or person who may be acting as secretary of the meeting. The secretary of the meeting shall enter a record of all such proxies in the minutes of the meeting.

3.08 Votes. With respect to each matter submitted to a vote of the members, each member entitled to vote at the meeting shall have the right to cast, in person or by proxy, the number of votes appertaining to the Unit of such member, as shown in the Declaration. The affirmative vote of a majority of the votes entitled to be cast by the members present or represented by proxy at a meeting at which a quorum was initially present shall be necessary for adoption of any matter voted on by the members, unless a greater proportion is required by the Articles of Incorporation, these Bylaws, the Declaration or Utah law. The election of Trustees shall be by secret ballot. If a membership

is jointly held, all or any holders thereof may attend each meeting of the members.

3.09 Waiver of Irregularities. All inaccuracies and irregularities in calls or notices of meetings and in the manner of voting form of proxies, and method of ascertaining members present, shall be deemed waived if no objection is made at the meeting.

3.10 Informal Action by Members. Any action that is required or permitted to be taken at a meeting of the members may be taken without a meeting, if a consent in writing, setting forth the action so taken, shall be signed by all of the members entitled to vote with respect to the subject matter thereof.

ARTICLE IV

BOARD OF TRUSTEES

4.01 General Powers. The property, affairs and business of the Association shall be managed by its Board of Trustees. The Board of Trustees may exercise all of the powers of the Association, whether derived from law or the Articles of Incorporation, except such powers as are by law, by the Articles of Incorporation, by these Bylaws or by the Declaration vested solely in the members. The Board of Trustees may by written contract delegate, in whole or in part, to a professional management organization or person such of its duties, functions and powers as are properly delegable.

4.02 Number, Tenure and Qualifications. The number of Trustees of the Association shall be three (3). The initial Board of Trustees specified in the Articles of Incorporation shall serve until either Declarant elects substitutes Trustees for such initial Board or the Declarant turns over to the members, as provided in Section 6.02 of the Declaration, the responsibility for electing Trustees, whichever first occurs. At the first annual meeting of the members held after the Declarant turns over to the members responsibility for electing Trustees, the members shall elect three (3) Trustees to replace all of the then serving Trustees and to serve for the following respective terms: Two (2) Trustees to serve for a term of Two (2) years each and one (1) Trustee to serve for a term of one (1) year. At each annual meeting thereafter, the members shall elect for terms of two (2) years each the appropriate number of Trustees to fill all vacancies created by expiring terms of Trustees. All Trustees, except Trustees appointed by the Declarant, shall be members of the Association.

4.03 Regular Meetings. The Regular annual meeting of the Board of Trustees shall be held without other notice than this bylaw immediately after, and at the same place as, the annual meeting of the members. The Board of Trustees may provide by resolution the time and place, within Salt Lake County, State of Utah, for the holding of additional regular meetings without other notice than such resolution.

4.04 Special Meetings. Special meetings of the Board of Trustees may be called by or at the request of any Trustee. The person or persons authorized to call special meeting of the Board of Trustees may fix any place, within Salt Lake County, State of Utah, as the place for holding any special meeting of the Board of Trustees called by such person or persons. Notice of any special meeting shall be given at least five (5) days prior thereto by written notice delivered personally or mailed to each Trustee at his registered address. If mailed, such notice shall be deemed to be delivered when deposited in the U. S. mail so addressed, with first class postage thereon prepaid. Any Trustee may waive notice of a meeting.

4.05 Quorum and Manner of Acting. A majority of the then authorized number of Trustees shall constitute a quorum for the transaction of business at any meeting of the Board of Trustees. The Act of a majority of the Trustees present at any meeting at which a quorum is present shall be the act of the Board of Trustees. The Trustees shall act only as a Board, and individual Trustees shall have no powers as such.

4.06 Compensation. No Trustee shall receive compensation for any services that he may render to the Association as a Trustee; provided, however, that a Trustee may be reimbursed for expenses incurred in performance of his duties as a Trustee to the extent such expenses are approved by the Board of Trustees and (except as otherwise provided in these Bylaws) may be compensated for services rendered to the Association other than in his capacity as a Trustee.

4.07 Resignation and Removal. A Trustee may resign at any time by delivering a written resignation to either the President or the Board of Trustees. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any Trustee, except a Trustee appointed by the Declarant, may be removed at any time, for or without cause, by the affirmative vote of seventy five percent of the members duly called for that purpose.

4.08 Vacancies and Newly Created Trusteeships. If vacancies shall occur in the Board of Trustees by reason of the death, resignation or disqualification of a Trustee (other than a Trustee appointed by Declarant), the Trustees then in office shall continue to act, and such vacancies shall be filled by a vote of the Trustees then in office, though less than a quorum, in any way approved by such Trustees at the meeting. Any vacancy in the Board of Trustees occurring by reason of removal of a Trustee by the members may be filled by election at the meeting at which such Trustee is removed. If the authorized number of Trustees shall be increased, such newly created Trusteeships shall be filled by election of the members at a special meeting or annual meeting of the members. If vacancies shall occur in the Board of Trustees by reason of death, resignation or removal of a Trustee appointed by the Declarant, such vacancies shall be filled by appointments to be made by the Declarant. Any Trustee elected or appointed hereunder to fill a vacancy shall serve the unexpired term of his predecessor or for the term of the newly created Trusteeship, as the case may be.

4.09 Informal Action by Trustees. Any action that is required or permitted to be taken at a meeting of the Board of Trustees may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Trustees.

ARTICLE V

OFFICERS

5.01 Officers. The officers of the Association shall be a President, Vice President, Secretary, Treasurer and such other officers as may from time to time be appointed by the Board of Trustees.

5.02 Election, Tenure and Qualifications. The officers of the Association shall be chosen by the Board of Trustees annually at the regular annual meeting of the Board of Trustees. In the event of failure to choose officers at such regular annual meeting of the Board of Trustees, officers may be chosen at any regular or special meeting of the Board of Trustees. Each such officer (whether chosen at a regular annual meeting of the Board of Trustees or otherwise) shall hold his office until the next ensuing regular annual meeting of the Board of Trustees and until his successor shall have been chosen and qualified, or until his death, or until his resignation, disqualification or removal in the manner provided in these Bylaws, whichever first occurs. Any one person may hold any two or more of such offices, except that the President may not also be the Secretary. No person holding two or more offices shall act in or execute any instrument in the capacity of

more than one office. The President, Secretary and Treasurer shall be and remain Trustees of the Association during the entire term of their respective offices. No other officer need be a Trustee.

5.03 Subordinate Officers. The Board of Trustees may from time to time appoint such other officers or agents as it may deem advisable, each of whom shall have such title, hold office for such period, have such authority and perform such duties as the Board of Trustees may from time to time delegate to any officer or agent the power to appoint any such subordinate officers or agents and to prescribe their respective titles, terms of office, authorities and duties. Subordinate officers need not be members or Trustees of the Association.

5.04 Resignation and Removal. Any officer may resign at any time by delivering a written resignation to the President or the Board of Trustees. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed by the Board of Trustees at any time, for or without cause.

5.05 Vacancies and Newly Created Offices. If any vacancy shall occur in any office by reason of death, resignation, removal, disqualification or any other cause, or if a new office shall be created, such vacancies or newly created offices may be filled by the Board of Trustees at any regular or special meeting.

5.06 The President. The President shall preside at meetings of the Board of Trustees and at meetings of the members. He shall sign on behalf of the Association all conveyances, mortgages, documents and contracts and shall do and perform all other acts and things that the Board of Trustees may require of him.

5.07 The Vice President. The Vice President shall act in the place and stead of the President in the event of the President's absence or inability or refusal to act and shall exercise and discharge such other duties as may be required of him by the Board of Trustees.

5.08 The Secretary. The Secretary shall keep the minutes of the Association and shall maintain such books and records as these Bylaws, the Declaration or any resolution of the Board of Trustees may require to keep. The Secretary shall also act in the place and stead of the President in the event of the absence of both President and Vice President or their inability or refusal to act. He shall be the custodian of the seal of the Association, if any, and shall affix such seal, if any, to all papers and instruments requiring the same. He shall perform such other duties as the Board of Trustees may require of him.

5.09 The Treasurer. The Treasurer shall have the custody and control of the funds of the Association, subject to the action of the Board of Trustees, and shall, when requested by the President to do so, report the state of the finances of the Association at each annual meeting of the members and at any meeting of the Board of Trustees. He shall perform such other duties as the Board of Trustees may require of him.

5.10 Compensation. No officer shall receive compensation for any services that he may render to the Association as an officer; provided, however, that an officer may be reimbursed for expenses incurred in performance of his duties as an officer to the extent such expenses are approved by the Board of Trustees and (except as otherwise provided in these Bylaws) may be compensated for services rendered to the Association other than in his capacity as a officer.

ARTICLE VI

COMMITTEES

6.01 Designation of Committees. The Board of Trustees may from time to time by resolution designate such committees as it may deem appropriate in carrying out its duties, responsibilities, functions and powers. The membership of each such committee designated hereunder shall include at least one (1) Trustee. No committee member shall receive compensation for services that he may render to the Association as a committee member; provided, however, that a committee member may be reimbursed for expenses incurred in performance of his duties as a committee member to the extent that such expenses are approved by the Board of Trustees and (except as otherwise provided in these Bylaws) may be compensated for services rendered to the Association other than in his capacity as a committee member.

6.02 Proceedings of Committees. Each committee designated hereunder by the Board of Trustees may appoint its own presiding and recording officers and may meet at such places and times and upon such notice as such committee may from time to time determine. Each such committee shall keep a record of its proceedings and shall regularly report such proceedings to the Board of Trustees.

6.03 Quorum and Manner of Acting. At each meeting of any committee designated hereunder by the Board of Trustees, the presence of members constituting at least a majority of the authorized membership of such committee (but in an event less than two members) shall constitute a quorum for the transaction of business, and the act of a majority of the members present at any meeting at which a quorum is present shall be the act of such

committee. The members of any committee designated by the Board of Trustees hereunder shall act only as a committee and the individual members thereof shall have no powers as such.

6.04 Resignation and Removal. Any member of any committee designated hereunder by the Board of Trustees may resign at any time by delivering a written resignation to the President, the Board of Trustees or the presiding officer of the committee of which he is a member. Unless otherwise specified therein, such resignation shall take effect upon delivery. The Board of Trustees may at any time, for or without cause, remove any member of any committee designated by it hereunder.

6.05 Vacancies. If any Vacancy shall occur in any committee designated by the Board of Trustees hereunder, due to death, disqualification, resignation, removal or otherwise, the remaining members shall, until the filling of such vacancy, constitute the then total authorized membership of the committee and, provided that two or more members are remaining, may continue to act. Such vacancy may be filled at any meeting of the Board of Trustees.

ARTICLE VII

INDEMNIFICATION

7.01 Indemnification Third Party Actions. The Association shall indemnify any person who was or is party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association), by reason of the fact that he is or was a Trustee or officer of the Association, or is or was serving at the request of the Association as a director, trustee, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, and no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by an adverse order, judgment, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Association and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

7.02 Indemnification Association Actions. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that he is or was a Trustee or officer of the Association, or is or was serving at the request of the Association as a director, trustee, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the Association, unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

7.03 Determinations. To the extent that a person has been successful on the merits or otherwise in defense of any action suit or proceeding referred to in Sections 7.01 and 7.02 hereof, or in defense of any claim, issued or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith. Any other indemnification under Section 7.01 and 7.02 hereof shall be made by the Association only upon a determination that indemnification of the person is proper in the circumstances because he has met the applicable standard of conduct set forth respectively in Sections 7.01 and 7.02 hereof. Such determination shall be made either (i) by the Board of Trustees by a majority vote of disinterested Trustees, or (ii) by independent legal counsel in a written opinion, or (iii) by the members of the affirmative vote of at least fifty percent (50%) of the Total Votes of the Association at any meeting duly called for such purpose.

7.04 Advances. Expenses incurred in defending a civil or criminal action, suit or proceeding as contemplated in this article may be paid by the Association in advance of the final disposition of such action, suit or proceeding upon a majority vote of a quorum of the Board of Trustees and upon receipt of an undertaking by or on behalf of the person to repay such amount or amounts unless it ultimately be determined that he is entitled to be indemnified by the Association as authorized by this article or otherwise.

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7.05 Scope of Indemnification. The indemnification provided for by this article shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any provision in the Association's Articles of Incorporation, Bylaws, agreements, vote of disinterested members or Trustees or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office. The indemnification authorized by this article shall apply to all present and future Trustees, officers, employees and agents of the Association and shall continue as to such persons who cease to be Trustees, officers, employees or agents of the Association and shall inure to the benefit of the heirs and personal representatives of all such persons and shall be in addition to all other rights to which such persons may be entitled as a matter of law.

7.06 Insurance. The Association shall purchase and maintain insurance on behalf of any person who is a Trustee, officer, employee or agent of the Association, or who is serving at the request of the Association as a Trustee, director, officer, employee or agent of another corporation, entity or enterprise (whether for profit or not for profit), as may be required by Article IX of the Declaration.

7.07 Payments and Premiums. All indemnification payments made, and all insurance premiums for insurance maintained, pursuant to this article shall constitute expenses of the Association and shall be paid with funds from the Common Expense Fund referred to in the Declaration.

ARTICLE VIII

FISCAL YEAR AND SEAL

8.01 Fiscal Year. The fiscal year of the Association shall begin on the first day of January each year and end on the 31st day of December next following, except that the first fiscal year shall begin on the date of incorporation.

8.02 Seal. The Board of Trustees may by resolution provide a corporate seal which shall be circular in form and shall have inscribed thereon the name of the Association, the state of incorporation and the words "Corporate Seal".

ARTICLE IX

RULES AND REGULATIONS

9.01 Rules and Regulations. The Board of Trustees may from time to time adopt, amend, repeal and enforce reasonable rules and regulations governing the use and operation of the Common Areas, to the extent that such rules and regulations are not inconsistent with the rights and duties set forth in the Articles of Incorporation, the Declaration or these Bylaws. The members shall be provided with copies of all rules and regulations adopted by the Board of Trustees and with copies of all amendments and revisions thereof.

ARTICLE X

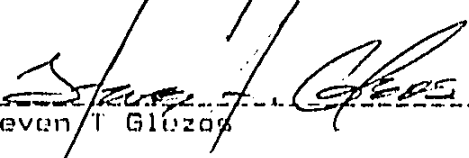
AMENDMENTS

10.01 Amendments. Except as otherwise provided by law, by the Articles of Incorporation, by the Declaration or by these Bylaws, these Bylaws may be amended, altered or repealed and new bylaws may be made and adopted by the members upon the affirmative vote of at least sixty six (66%) of the Total Votes of the Association; provided, however, that such action shall not be effective unless and until a written instrument setting forth (i) the amended, altered, repealed or new bylaw, (ii) the number of votes cast in favor of such action, and (iii) the Total Votes of the Association shall have been executed and verified by the current President of the Association and recorded in the office of the County Recorder of Salt Lake County, State of Utah.

IN WITNESS WHEREOF, the undersigned, constituting all of the Trustees of the Birch Point Home Owners Association have executed these Bylaws on the fifteenth day of October, 1991.



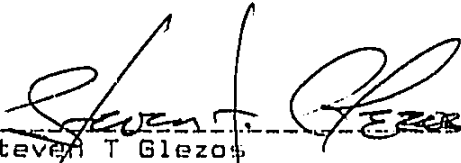
Ernest T Glezos



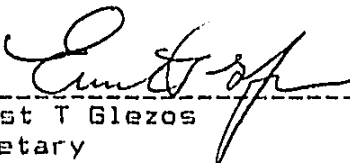
Steven T Glezos

CONSENT OF DECLARANT

On this fifteenth day of October, 1991, the undersigned, GAFCO, Inc., a Utah Corporation, as he Declarant, does hereby consent to and execute these Bylaws in accordance with the provisions of law.



Steven T Glezos
President

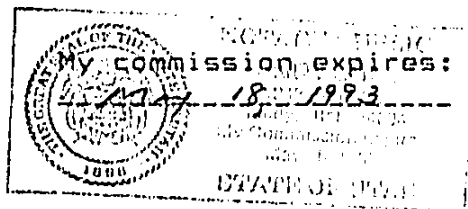


Ernest T Glezos
Secretary

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

On this 16th day of October, 1991, personally appeared before me Steven T Glezos and Ernest T Glezos, who being by me duly sworn did say, that they are the members of the Board of Trustees of the Birch Point Home Owners Association, and that the within and foregoing instrument was signed in behalf of said corporation by authority of a resolution of its Board of Trustees, and said Ernest T Glezos and Steven T Glezos duly acknowledged to me that they executed the same.

C. J. L.
NOTARY PUBLIC
Residing at S. J. Utah



STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

On this 16th day of October, 1991, personally appeared before me Steven T Glezos and Ernest T Glezos, who being by me duly sworn did say, that they, the said Steven T Glezos and Ernest T Glezos, are the President and Secretary of GAFCO, Inc., a Utah Corporation, and that the said instrument was signed in behalf of said corporation by authority of its Articles of Incorporation, and Steven T Glezos and Ernest T Glezos acknowledge to me that the said corporation executed the same.

C. J. L.
NOTARY PUBLIC
Residing at S. J. Utah

