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**DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS AND RESERVATION OF  
EASEMENTS FOR STONECREST,  
A PLANNED UNIT DEVELOPMENT**

EX 677932400

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
AND RESERVATION OF EASEMENTS  
FOR STONECREST,  
A PLANNED UNIT DEVELOPMENT**

RECITALS .....	1
ARTICLE I .....	2
Definitions .....	2
Section 1.01. "Architectural Committee" .....	2
Section 1.02. "Articles" .....	2
Section 1.03. "Association" .....	2
Section 1.04. "Board" .....	2
Section 1.05. "Bylaws" .....	2
Section 1.06. "Capital Improvement Assessment" .....	2
Section 1.07. "Common Area" .....	2
Section 1.08. "Common Assessment" .....	3
Section 1.09. "Common Expenses" .....	3
Section 1.10. "Declarant" .....	3
Section 1.11. "Declaration" .....	3
Section 1.12. "Description of Improvements" .....	3
Section 1.13. "Dwelling Unit" .....	3
Section 1.14. "Family" .....	3
Section 1.15. "Improvement" .....	4
Section 1.16. "Limited Common Area" .....	4
Section 1.17. "Lot" .....	4
Section 1.18. "Maintenance Funds" .....	4
Section 1.19. "Manager" .....	4
Section 1.20. "Map" .....	4
Section 1.21. "Member" .....	4
Section 1.22. "Mortgage"; "Mortgagee" .....	4
Section 1.23. "Notice and Hearing" .....	5
Section 1.24. "Owner" .....	5
Section 1.25. "Person" .....	5
Section 1.26. "Properties" .....	5
Section 1.27. "Reconstruction Assessment" .....	5
Section 1.28. "Record, Recorded, Filed and Recordation" .....	5
Section 1.29. "Special Assessment" .....	5
Section 1.30. "Structural Maintenance Areas" .....	5
ARTICLE II Owner's Property Rights .....	6
Section 2.01. "Owner's Easements of Enjoyment." .....	6
Section 2.02. Delegation of Use .....	7

Section 2.03. Easements for Parking . . . . .	7
Section 2.04. Easements for Vehicular Traffic . . . . .	7
Section 2.05. Easements for City and County Public Service Use . . . . .	8
Section 2.06. Waiver of Use . . . . .	8
Section 2.07. Title to the Common Area . . . . .	8
Section 2.08. Taxes . . . . .	8
Section 2.09. Use of Limited Common Area . . . . .	8
 ARTICLE III Membership in Association . . . . .	 9
Section 3.01. Membership . . . . .	9
Section 3.02. Transfer . . . . .	9
 ARTICLE IV Voting Rights . . . . .	 9
Section 4.01. Classes of Voting Membership . . . . .	9
Section 4.02. Vote Distribution . . . . .	10
 ARTICLE V Duties and Powers of Association . . . . .	 10
 ARTICLE VI Covenant for Maintenance Assessments . . . . .	 11
Section 6.01. Creation of the Lien and Personal Obligation of Assessments . . . . .	11
Section 6.02. Purpose of Common Assessments . . . . .	12
Section 6.03. Damage to Common Area by Owners . . . . .	12
Section 6.04. Capital Improvement and Reconstruction Assessments. . . . .	12
Section 6.05. Notice and Quorum for an Action Authorized Under Section 6.04 . . . . .	13
Section 6.06. Equal Rate of Assessment . . . . .	13
Section 6.07. Date of Commencement of Common Assessments: Due Date . . . . .	13
Section 6.08. Exempt Property . . . . .	14
 ARTICLE VII Effect of Non-Payment of Assessments Remedies of the Association . . . . .	 15
Section 7.01. Effect of Non-Payment of Assessments: Remedies of the Association . . . . .	15
Section 7.02. Notice of Default . . . . .	15
Section 7.03. Foreclosure Sale . . . . .	16
Section 7.04. Curing of Default . . . . .	16
Section 7.05. Cumulative Remedies . . . . .	16
Section 7.06. Subordination of the Lien to Mortgages . . . . .	16
 ARTICLE VIII Architectural Control . . . . .	 16
Section 8.01. Members of Committee . . . . .	16
Section 8.02. Review of Proposed Construction . . . . .	17
Section 8.03. Meetings of the Committee . . . . .	17
Section 8.04. No Waiver of Future Approvals . . . . .	17
Section 8.05. Compensation of Members . . . . .	18
Section 8.06. Inspection of Work . . . . .	18

BK6779552402

Section 8.07. Non-Liability of Committee Members . . . . .	18
Section 8.08. Variance . . . . .	19
Section 8.09. Fences and Sign Barriers . . . . .	19
<b>ARTICLE IX Maintenance and Repair Obligations . . . . .</b>	<b>19</b>
Section 9.01. Structural Maintenance Areas . . . . .	19
Section 9.02. Maintenance Obligations of Owners . . . . .	19
Section 9.03. Maintenance Obligations of Association . . . . .	20
Section 9.04. Damage and Destruction Affecting Residences -- Duty to Rebuild . . . . .	20
Section 9.05. Variance in Exterior Appearance and Design . . . . .	20
Section 9.06. Time Limitation . . . . .	20
<b>ARTICLE X Use Restrictions . . . . .</b>	<b>21</b>
Section 10.01. Single Family Residence . . . . .	21
Section 10.02. Business or Commercial Activity . . . . .	21
Section 10.03. Real Estate Business . . . . .	21
Section 10.04. Nuisances . . . . .	21
Section 10.05. Signs . . . . .	22
Section 10.06. Parking and Vehicular Restrictions . . . . .	22
Section 10.07. Animal Restriction . . . . .	22
Section 10.08. Trash . . . . .	23
Section 10.09. View Obstructions . . . . .	23
Section 10.10. Temporary Buildings . . . . .	23
Section 10.11. Common Area Facilities . . . . .	23
Section 10.12. Declarant Exemption . . . . .	24
Section 10.13. Outside Installations . . . . .	24
Section 10.14. Insurance Rates . . . . .	25
Section 10.15. Drilling . . . . .	25
Section 10.16. Further Subdivision . . . . .	25
Section 10.17. Drainage . . . . .	25
Section 10.18. Water Supply System . . . . .	25
<b>ARTICLE XI Party Fences and Party Walls . . . . .</b>	<b>26</b>
Section 11.01. Non-Party Fences . . . . .	26
Section 11.02. General Rules of Law to Apply to Party Fences . . . . .	26
Section 11.03. General Rules of Law to Apply to Party Walls . . . . .	26
Section 11.04. Sharing of Repair and Maintenance . . . . .	26
Section 11.05. Destruction by Fire or Other Casualty . . . . .	26
Section 11.06. Right to Contribution Runs with Land . . . . .	26
Section 11.07. Arbitration . . . . .	26
<b>ARTICLE XII Damage or Destruction to Common Area . . . . .</b>	<b>27</b>
<b>ARTICLE XIII Insurance . . . . .</b>	<b>27</b>

Section 13.01. Common Area . . . . .	27
Section 13.02. Insurance Obligations of Owners . . . . .	28
Section 13.03. Replacement or Repair of Property . . . . .	28
Section 13.04. Waiver of Subrogation . . . . .	29
Section 13.05. Liability Insurance . . . . .	29
Section 13.06. Fidelity Coverage . . . . .	30
Section 13.07. Other Insurance and General . . . . .	30
ARTICLE XIV Mortgage Protection Clause . . . . .	30
ARTICLE XV General Provisions . . . . .	33
Section 15.01. Enforcement . . . . .	33
Section 15.02. Severability . . . . .	33
Section 15.03. Term . . . . .	34
Section 15.04. Interpretation . . . . .	34
Section 15.05. Amendments . . . . .	34
Section 15.06. No Public Right or Dedication . . . . .	34
Section 15.07. Constructive Notice and Acceptance . . . . .	34
Section 15.08. Reservation of Easements . . . . .	35
Section 15.09. Notices . . . . .	35
Section 15.10. No Representations or Warranties . . . . .	35
Section 15.11. Conflict . . . . .	35

EXHIBITS

Exhibit "A"            Real Property Description  
Exhibit "B"            Schedule of Dwelling Units

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
AND RESERVATION OF EASEMENTS  
FOR STONECREST CONDOMINIUMS,  
A PLANNED UNIT DEVELOPMENT**

THIS DECLARATION, made this 15th day of October, 1983, by Oak Financial Services, Inc., a Utah corporation, hereinafter referred to as the "Declarant".

RECITALS:

A. Declarant is the owner of certain property in the County of Salt Lake, State of Utah, which is more particularly described in Exhibit A attached hereto and by this reference made a part hereof, entitled Real Property Description of Stonecrest, a Planned Unit Development.

B. Declarant has deemed it desirable, for the efficient preservation of the values and amenities in the real property described in Exhibit A of this Declaration, to create a non-profit corporation under the Utah Non-Profit Corporation and Cooperative Association Act, Utah Code Annotated (1953), Sections 16-6-18 through 16-6-112, hereinafter referred to as the "Non-Profit Act", to which should be delegated and assigned the powers of owning, maintaining and administering the Common Area and administering and enforcing the covenants and restrictions, and collecting and disbursing the assessments and charges hereinafter created.

C. Declarant will or has caused such corporation, the Members of which shall be the respective Owners of Lots in the Properties, to be formed for the purpose of exercising the functions aforesaid.

D. Declarant will develop and convey all of the Properties (as hereinafter defined), pursuant to a general plan for all of the Properties and subject to certain protective covenants, conditions, restrictions, reservations, easements, equitable servitudes, liens and charges, all running with the Properties as hereinafter set forth.

E. Declarant hereby declares that all of the Properties shall be held, sold, conveyed, encumbered, hypothecated, leased, used, or occupied and improved subject to the following easements, restrictions, covenants, conditions and equitable servitudes, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of the Properties, in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Properties, or any portion thereof. The covenants, conditions, restrictions, reservations, easements, and equitable servitudes set forth herein shall run with the Properties and shall be binding upon all persons having any right, title or interest in the Properties, or any part thereof, their heirs, successors and assigns; shall inure to the benefit of every portion of the Properties and any interest therein; and shall inure to the benefit of and be binding upon Declarant, its successors in interest and each Owner and his respective

successor in interest; and may be enforced by any Owner and his successors in interest, and by the Association.

Notwithstanding the foregoing, no provisions of this Declaration shall be construed as to prevent or limit Declarant's rights to development of the Properties and construction of improvements thereon, nor offices or similar facilities on any property in the Properties owned by Declarant or the Association, nor Declarant's right to post signs incidental to construction, sales or leasing.

## ARTICLE I

### Definitions

Unless otherwise expressly provided, the following words and phrases when used herein shall have the meanings hereinafter specified:

Section 1.01. "Architectural Committee" shall mean the committee created pursuant to Article VIII hereof.

Section 1.02. "Articles" shall mean the Articles of Incorporation of the Association which have been filed in the office of the Department of Commerce, Division of Corporations and Commercial Code of the State of Utah, as such Articles may be amended from time to time.

Section 1.03. "Association" shall mean Stonecrest Homeowners Association, Inc., a corporation formed under the Non-Profit Act, its successors and assigns.

Section 1.04. "Board" shall mean the Board of Trustees of the Association, elected in accordance with the Bylaws of the Association.

Section 1.05. "Bylaws" shall mean the Bylaws of the Association, which have been adopted by the Board as such Bylaws may be amended from time to time.

Section 1.06. "Capital Improvement Assessment" shall mean a charge against each Owner and his Lot, representing a portion of the costs to the Association for the installation or construction of any improvements on any portion of the Common Area which the Association may from time to time authorize.

Section 1.07. "Common Area" shall mean all the real property and improvements within the Properties as shown upon the recorded Subdivision Plat of Stonecrest, a Planned Unit Development (the "Map") except the Lots and any improvements created on such Lots.



Section 1.08. "Common Assessment" shall mean the charge against each Owner and his Lot, representing a portion of the total costs to the Association of maintaining, improving, repairing, managing and operating the Properties, which are to be paid uniformly and equally by each Owner to the Association, as provided herein.

Section 1.09. "Common Expenses" shall mean the actual and estimated costs of: maintenance, management, operation, repair and replacement of the Common Area (including unpaid special assessments, reconstruction assessments and capital improvement assessments), including those costs not paid by the Owner responsible for payment; costs of management and administration of the Association including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and other employees; the costs of all utilities, gardening and other services benefiting the Common Area, the costs of fire, casualty and liability insurance covering the Properties; and the costs of bonding of the members of the management body; taxes paid by the Association; the costs for discharge of any lien or encumbrance levied against the Properties, or portions thereof; and the costs of any other item or items designated by, or in accordance with other expenses incurred by, the Association for any reason whatsoever in connection with the Properties, for the benefit of all of the Owners.

Section 1.10. "Declarant" shall mean and refer to Oak Financial Services, Inc., a Utah Corporation, its successors and assigns, so long as Declarant assigns such rights of Declarant hereunder to any person or entity by an express written assignment.

Section 1.11. "Declaration" shall mean this instrument as it may be amended from time to time.

Section 1.12. "Description of Improvements" All improvements with respect to the property shall be constructed in accordance with the information contained on the Map. The buildings shall be of wood, metal and brick construction, and shall contain a total of sixteen (16) townhouse Dwelling Units, each of which shall contain four (4) bedrooms. Electricity, gas and water are separately metered to each Dwelling Unit. Each Dwelling Unit is equipped with carpet, range, oven, refrigerator, disposal, dishwasher, and patio or balcony. Heating and hot water are provided for each Dwelling Unit by furnace and a hot water heater in each Unit. Disposal of garbage will not be separately billed and will be paid as a common expense.

Section 1.13. "Dwelling Unit" shall mean and refer to a building located on a Lot designed and intended for use and occupancy as a residence by a single Family. The Map and Exhibit "B" attached hereto show the Unit Number of each Dwelling Unit, its location, and its square footage. All Dwelling Units shall be capable of being independently owned, encumbered and conveyed. Each Dwelling Unit shall include all improvements on the Lot.

Section 1.14. "Family" shall mean (1) a group of natural persons related to each other by blood or legally related to each other by marriage or adoption, or (2) a group of not

more than four unrelated persons, inclusive of their domestic servants, who maintain a common household in a Dwelling Unit.

Section 1.15. "Improvement" shall mean all structures and appurtenances thereto of every type and kind, including but not limited to buildings, outbuildings, walkways, sprinkler pipes, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior air conditioning and water-softener fixtures or equipment.

Section 1.16. "Limited Common Area" Shall mean any Common Areas designated as such on the Map or herein as reserved for use of a certain Lot or Lots to the exclusion of the other Lots in the Project. Structural separations between Dwelling Units or the space which would be occupied by such structural separations may become Limited Common Area for the exclusive use of the Owner or Owners of the Lots on either side thereof. Any green belt, balconies, porches, parking stalls, storage facilities or other areas that are designated Limited Common Areas on the map and which are adjacent to a particular Lot shall be Limited Common Area for the exclusive use of the Owner of that Lot. The Map contains a description of the Limited Common Area of the Project. The Map also designates the Lot or Lots to which each of the Limited Common Area is reserved.

Section 1.17. "Lot" shall mean and refer to any residential Lot or parcel of land shown upon the recorded subdivision plat of this planned unit development, with the exception of the Common Area.

Section 1.18. "Maintenance Funds" shall mean the accounts created for receipts and disbursements of the Association, pursuant to Article VI hereof.

Section 1.19. "Manager" shall mean the person, firm or corporation appointed by the Association hereunder or its agents and delegated certain duties, powers or functions of the Association.

Section 1.20. "Map" shall mean the subdivision plat of Stonecrest, a Planned Unit Development which has been or shall be recorded in the office of the County Recorder of Salt Lake County, State of Utah and which shows the Properties including the Lots, the Common Area, Limited Common Area and any easements and rights-of-way appurtenant thereto.

Section 1.21. "Member" shall mean any person or entity holding a membership in the Association as provided herein.

Section 1.22. "Mortgage"; "Mortgages" shall mean any mortgage or deed of trust or other conveyance of a Lot to secure the performance of an obligation, which will be void and reconveyed upon the completion of such performance. The term "Deed of Trust" or "Trust Deed" when used herein shall be synonymous with the term "Mortgage". The term

"Mortgage" shall mean a person or entity to whom a mortgage is made and shall include the beneficiary of a deed of trust; "Mortgagor" shall mean a person or entity who mortgages his or its property to another (i.e., the maker of a mortgage), and shall include the Trustor of a deed of trust. The term "Trustor" shall be synonymous with the term "Mortgagor", and the term "Beneficiary" shall be synonymous with the term "Mortgagee".

Section 1.23. "Notice and Hearing" shall mean written notice and a public hearing before a tribunal appointed by the Board, at which the Owner concerned shall have an opportunity to be heard in person or by counsel at Owner's expense, in the manner further provided in the Bylaws.

Section 1.24. "Owner" shall mean and refer to the person or persons or other legal entity or entities, including Declarant, holding fee simple interest of record to any Lot which is part of the Properties, including sellers under executory contracts of sale, but excluding those having such interest merely as security for the performance of an obligation. For purposes of Article X only, unless the context otherwise requires, Owner shall also include the family, invitees, licensees and Lessees of any Owner.

Section 1.25. "Person" shall mean a natural individual or any other entity with the legal right to hold title to real property.

Section 1.26. "Properties" shall mean and refer to all of the real property described in Exhibit A of the Recitals to this Declaration. (See Exhibit A attached).

Section 1.27. "Reconstruction Assessment" shall mean a charge against each Owner and his Lot, representing a portion of the cost to the Association for reconstruction of any portion or portions of the Improvements on the Common Area pursuant to the provisions of this Declaration.

Section 1.28. "Record, Recorded, Filed and Recordation" shall mean, with respect to any document, the recordation of such document in the Office of the County Recorder of Salt Lake County.

Section 1.29. "Special Assessment" shall mean a charge against a particular Owner and his Lot, directly attributable to the Owner, equal to the cost incurred by the Association for corrective action performed pursuant to the provisions of this Declaration, plus interest thereon as provided for in this Declaration.

Section 1.30. "Structural Maintenance Areas" shall mean, as the same may from time to time exist, the exterior surfaces of all residential structures, the fences, the exterior roofing material of the structures, and any exterior sidewalks on the Lots.

The foregoing definitions shall be applicable to this Declaration.

## ARTICLE II

### Owner's Property Rights

Section 2.01. "Owner's Easements of Enjoyment." Every Owner shall have a right and easement of ingress and egress and of enjoyment in, to and over the Common Area which shall be appurtenant to and shall pass with title to every Lot, subject to the following provisions:

(a) The right of the Association to reasonably limit the number of guests of Owners using the Common Area facilities.

(b) The right of the Association to establish uniform rules and regulations pertaining to the use of the Common Area, including, but not limited to, the right and obligation of the Association to enforce all parking restrictions within the Common Area as set forth in Section 2.03 of Article II herein

(c) The right of the Association in accordance with its Articles of Incorporation, Bylaws and this Declaration, with the vote of or written assent of two-thirds (2/3) of each class of members (excluding therefrom the voting power of Declarant), to borrow money for the purpose of improving the Common Area and in aid thereof, and subject to the provisions of Article XIV of this Declaration, to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, provided that the rights of such mortgagee shall be subordinated to the rights of the Owners.

(d) Except for the right of ingress and egress to the Owners' Lots the Association shall have the right to suspend the voting rights and right to use the Common Area by an Owner for any period during which any assessment against his Lot remains unpaid and delinquent; and for a period not to exceed thirty (30) days for any single infraction of the published rules and regulations of the Association provided that any suspension of such voting rights or the right of use of the Common Area shall be made only by the Board of Trustees of the Association, after notice and an opportunity for a hearing as provided in the Bylaws of the Association.

(e) Subject to the provisions of Article XIV of this Declaration, the right of the Association to dedicate, release, alienate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication, release, alienation or transfer shall be effective, unless an instrument signed by Members entitled to cast two-thirds (2/3) of the voting power of the Class A Members (excluding the voting power of Declarant), agreeing to such dedication, release, alienation or transfer has been recorded.

(f) The right of the Declarant (and its sales agents, customers and representatives) to the non-exclusive use of the Common Area, without charge, for construction of any improvements to be constructed on the Properties by Declarant, for sales, display, access, ingress, egress and exhibit purposes, which right Declarant hereby reserves; provided, however, that such use shall not be for a period of more than five (5) years from the date of recording this Declaration. Upon the request of Declarant and upon the vote of fifty-one (51%) percent of the Class A Members, this term may be extended for an additional period of time.

(g) The right of the Association (by action of the Board) to reconstruct, replace or refinish any improvement or portion thereof upon the Common Area, in accordance with the original design, finish or standard of construction of such improvement, or of the general improvements within the Properties, as the case may be; and not in accordance with such original design, finish or standard of construction only with the vote or written consent of the Owners holding Sixty-Seven (67%) percent of the voting power of the Association.

(h) The right of the Association to replace destroyed trees or other vegetation and plant trees, shrubs and ground cover upon any portion of the Common Area.

Section 2.02 Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area to the members of his family, his tenants, or contract purchasers who reside in his Dwelling Unit, subject to reasonable regulation by the Board.

Section 2.03. Easements for Parking. The specific parking spaces assigned to each Lot are described and designated herein or in the Map as being reserved for the exclusive use of the Owner of each such Lot. Every devise, encumbrance, conveyance or other disposition of a Lot shall be construed to include a permanent, exclusive easement appurtenant to such Lot for parking on those parking spaces described herein or in the Map as being reserved for the exclusive use of the Owner of such Lot. Temporary guest or recreational parking shall be permitted within the Common Area only within the spaces and areas clearly marked for this purpose. Spaces shall be shown by signs or markings on the paved area. The Association, through its officers, committees and agents is hereby empowered to establish "parking" and "no parking" areas within the Common Area, as well as to enforce these parking limitations by all means lawful for such enforcement including the removal of any violation vehicle by those so empowered. Garages constructed in connection with a Dwelling Unit shall be part of the Dwelling Unit.

Section 2.04. Easements for Vehicular Traffic. In addition to the general easements for use of the Common Area reserved herein, there shall be and Declarant hereby reserves and covenants for itself and all future Owners within the Properties that each and every Owner shall have a non-exclusive easement appurtenant to his Lot for vehicular traffic over all private streets within the Properties, subject to the parking provisions set forth in Section 2.03 of Article II hereof.

Section 2.05. Easements for City and County Public Service Use. In addition to the foregoing easements over the Common Area, there shall be and Declarant hereby reserves and covenants for itself and all future Owners within this Planned Unit Development, easements for city, county and federal public services, including but not limited to, the right of the police to enter upon any part of the Common Area for the purpose of enforcing the law, for purposes of providing fire protection, transporting school children and providing municipal services.

Section 2.06. Waiver of Use. No Owner may exempt himself from personal liability for assessments duly levied by the Association, nor release the Lot or other property owned by him from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area and the facilities thereon or by abandonment of his Lot or any other property in the Properties.

Section 2.07. Title to the Common Area. The Declarant hereby covenants for itself, its successors and assigns that it will convey fee simple title to the Common Area described in Article I of this Declaration to the Association, free and clear of all monetary encumbrances and liens, except easements, conditions and reservations set forth in this Declaration and other matters of record as of the date hereof. Said conveyance shall be made prior to the conveyance of the first Lot to a purchaser from Declarant.

Section 2.08. Taxes. Each Owner shall execute such instruments and take such action as may reasonably be specified by the Association to obtain separate real estate tax assessment of each Lot. If any taxes or assessments may, in the opinion of the Association, nevertheless be a lien on more than one Lot not under common ownership, or any part thereof, they may be paid by the Association and each Owner shall be obligated to pay or to reimburse the Association for, as the case may be, the taxes and assessments assessed by the County Assessor or other taxing authority against his own Lot and interest, if any, in the Common Area.

Section 2.09. Use of Limited Common Area. Except as otherwise provided in this Declaration, and subject to the ordinances of the City of South Salt Lake including those ordinances relating to setbacks, fences, and sidewalks along public rights of way, each Owner shall have the exclusive right to use the Limited Common Area appurtenant to a Dwelling Unit as described herein and in the Map. Further each Owner shall have the right to landscape the Limited Common Area appurtenant to his respective Dwelling Unit without obtaining the prior written approval of the Architectural Committee described in Article VIII, so long as any landscaping undertaken in such Limited Common Area is completed in a timely fashion, does not create a harmful or unsafe condition and does not result in an increase in the cost of insurance on the Properties. Each Owner agrees to cooperate with the Association to keep and maintain the Limited Common Area in a clean, sanitary and attractive condition and to abide by all rules relating to Limited Common Area adopted by the Association.

## ARTICLE III

### Membership in Association

Section 3.01. Membership. Every Owner of a Lot shall be a member of the Association, and no Owner shall have more than one membership in the Association. Memberships in the Association shall not be assignable, except to the successor-in-interest of the Owner, and every membership in the Association shall be appurtenant to and may not be separated from the fee ownership of such Lot. Ownership of such Lot shall be the sole qualification for membership in the Association.

Section 3.02. Transfer. The Association membership held by any Owner of a Lot shall not be transferred, pledged or alienated in any way, except upon the sale or encumbrance of such Lot, and then only to the purchaser or Mortgagee of such Lot. Any attempt to make a prohibited transfer is void, and will not be reflected upon the books and records of the Association. A Class "A" Member who has sold his Lot to a contract purchaser under an agreement to purchase shall be entitled to delegate to such contract purchaser the right to exercise the contract seller's membership rights on seller's behalf. Such delegation shall be in writing and shall be delivered to the Board before such contract purchaser may vote. However, the contract seller shall remain liable for all charges and assessments attributable to his Lot until fee title to the Lot sold is transferred. In the event the Owner of any Lot shall fail or refuse to transfer the membership registered in his name to the purchaser of such Lot upon transfer of fee title thereto, the Board of Trustees shall have the right to record the transfer upon the books of the Association. The Board of Trustees shall have the right to charge a reasonable Special Assessment against any Owner, and his Lot, equal to the cost to the Association of effecting any such transfer of his membership upon the books of the Association.

## ARTICLE IV

### Voting Rights

Section 4.01. Classes of Voting Membership. The Association shall have two (2) classes of voting membership as follows:

Class A. Class A Members shall originally be all Owners with the exception of the Declarant for so long as there exists a Class B membership. Class A Members shall be entitled to one (1) vote for each Lot owned. Declarant shall become a Class A Member with regard to Lots owned by Declarant upon conversion of Declarant's Class B Membership as provided below. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised in accordance with Article IV, Section 2.02 of this Declaration, and in no event shall more than one (1) vote be cast with respect to any Lot.

Class B. The Class B Member shall be the Declarant and it shall be entitled to three (3) votes for each Lot owned by Declarant. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earliest:

- (a) When the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B membership; or
- (b) Three (3) years from the date of recording this Declaration; or
- (c) On voluntary cancellation of the Class B membership by Declarant.

Section 4.02. Vote Distribution. Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership. When more than one person holds such interest or interests in any Lot, ("co-owner"), all such co-owners shall be Members and may attend any meetings of the Association, but only one such co-owner shall be entitled to exercise the vote to which the Lot is entitled. Such co-owners may from time to time all designate in writing one of their number to vote. Fractional votes shall not be allowed, and the Class A vote for each Lot shall be exercised, if at all, as a unit. Where no voting co-owner is designated or if such designation has been revoked, the vote for such Lot shall be exercised as the majority of the co-owners of the Lot mutually agree. Unless the Board receives a written objection from a co-owner, it shall be presumed that the corresponding voting co-owner is acting with the consent of his or her co-owners. No vote shall be cast for any Lot where the majority of the co-owners present in person or by proxy and representing such Lot cannot agree to said vote or other action. The non-voting co-owner or co-owners shall be jointly and severally responsible for all of the obligations imposed upon the jointly owned Lot and shall be entitled to all other benefits of ownership. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established herein, or by the Bylaws of the Association, shall be deemed to be binding on all Owners, their successors and assigns. Said voting rights shall be subject to the restrictions and limitations provided in this Declaration and in the Articles of Incorporation and Bylaws of the Association.

## ARTICLE V

### Duties and Powers of Association

The Association, acting through the Board of Trustees, shall also have the power and duty to:

- (a) Maintain, repair and otherwise manage the Common Area and all facilities, and replace those elements of Common Area that must be replaced on a periodic basis, including the improvements and landscaping thereon in accordance with the provisions of Article VI of this Declaration.



(b) Maintain all private streets within this Planned Unit Development, including cleaning and periodic resurfacing.

(c) Maintain all private sewer systems within the Common Area.

(d) Grant easements, rights of way, or strips of land, where necessary, for utilities and sewer facilities over the Common Area to serve the Common Areas and the Lots.

(e) Maintain such policy or policies of insurance as may be permitted or allowed in this Declaration and the Bylaws

(f) Determine whether to employ or contract with a professional manager to perform all or any part of the duties and responsibilities of the Association, and shall have the power to delegate its powers to committees, officers and employees. Any such agreement shall be for a term not in excess of three (3) years, subject to cancellation by either party without cause or payment of a termination fee upon ninety (90) days or less written notice.

(g) After fifteen (15) days written notice, without being liable to any Owner, enter upon any Lot, for the purpose of enforcing by peaceful means the provisions of this Declaration, or for the purpose of maintaining or repairing any such area as required by this Declaration.

(h) Any and all additional power required to accomplish the duties and functions provided for in this Declaration.

## ARTICLE VI

### Covenant for Maintenance Assessments

Section 6.01. Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Lot owned by it within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (1) annual Common Assessment for Common Expenses, (2) Capital Improvement Assessments, (3) Special Assessments, and (4) Reconstruction Assessments; such assessments to be established and collected as hereinafter provided. Such assessments, together with interest, costs and reasonable attorneys' fees for the collection thereof, shall be a charge on the land and shall be a continuing lien upon the Lot against which such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. Subject to provisions of this Declaration protecting first Mortgagees, the personal obligation for delinquent assessments shall pass to the successors in interest of

such Owner. The Board of Trustees shall establish no fewer than two (2) such separate accounts into which shall be deposited all monies paid to the Association and from which disbursements shall be made, as provided herein, in the performance of functions by the Association under the provisions of this Declaration. Each of the Association's Maintenance Funds shall include: (1) an Operating Fund for current expenses of the Association, and (2) a Common Area Reserve Fund for replacements, painting and repairs (which would not reasonably be expected to recur on an annual or less frequent basis) of the Common Area to the extent necessary under the provisions of this Declaration. The Board of Trustees shall not commingle any amounts deposited into any of the Association's Maintenance Funds with one another.

Section 6.02. Purpose of Common Assessments. The Assessments levied by the Association shall be used to promote the common health, safety, benefit, recreation and welfare of the Owners and for the improvements and maintenance of the Common Area within the Properties as provided herein. The assessments shall also be for an adequate reserve to be used as appropriate for maintenance repairs and replacement of those elements of the Common Area property that must be replaced on a periodic basis. However, disbursements from the Common Area Reserve Fund shall be made by the Board of Trustees only for the specific purposes specified in this Article VI. Disbursements from the Operating Fund shall be made by the Board of Trustees for such purposes as are necessary for the discharge of its responsibilities herein for the common benefit of all of the Owners, other than those purposes for which disbursements from the Common Area Reserve Fund are to be used. Nothing in this Declaration shall be construed in such a way as to permit the Association to use any Assessments to abate any nuisance or annoyance emanating from outside the boundaries of the Properties. Nothing contained herein shall limit, preclude or impair the establishment of additional Maintenance Funds by the Association, so long as the amounts deposited into any such Fund are earmarked for specified purposes authorized by this Declaration.

Section 6.03. Damage to Common Area by Owners. The foregoing maintenance, repairs or replacements within the Common Area arising out of or caused by the willful or negligent act of the Owner, his family, guests or invitees shall be done at said Owner's expense or a Special Assessment therefore shall be made against his Lot; provided, however, that the liability of an individual Owner for such damage to the Common Area shall not be absolute, but shall only be that for which the Owner is legally responsible under State Law.

Section 6.04. Capital Improvement and Reconstruction Assessments. In addition to the Common Assessments authorized above, the Board of Trustees of the Association may levy, in any assessment year, a Capital Improvement Assessment or Reconstruction Assessment applicable to the year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement or other such addition upon the Common Area, including fixtures and personal property related thereto; provided that any such assessment in excess of Two Thousand Dollars (\$2,000) shall

have the vote or written assent of a majority of the votes of Members who are subject to such assessments, excluding therefrom the votes of Declarant.

Section 6.05. Notice and Quorum for an Action Authorized Under Section 6.04. Written notice of any meeting called for the purpose of taking any action by the Members authorized under Section 6.04 shall be sent to all Members not less than thirty (30) days, nor more than sixty (60) days, in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast fifty-one percent (51%) of all votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be twenty-five percent (25%) of the voting power of the Association. No such subsequent meeting shall be held more than thirty (30) days following the preceding meeting.

Section 6.06. Equal Rate of Assessment. Common Assessments, Capital Improvement Assessments and Reconstruction Assessments provided for in this Article VI must be fixed at an equal rate for all Lots within the Properties; provided, however, that the Association may, subject to the provisions of Section 3 of this Article, levy Special Assessments against selected Owners who have caused the Association to incur special expenses due to willful or negligent acts of said Owners, their guests or agents. All Common Assessments shall be collected on a regular basis by the Board of Trustees at such frequency as the Board shall determine.

Section 6.07. Date of Commencement of Common Assessments; Due Date. All assessments provided for herein shall be made in regular monthly installments after the assessment is made. The annual Common Assessment for all Lots shall commence, as provided for herein, on the first day of the month following the conveyance of the Common Area to the Association. The first annual Common Assessment shall be adjusted according to the number of months remaining in the fiscal year as set forth in the Bylaws. The Board of Trustees shall fix the amount of the annual Common Assessment against each Lot at least thirty (30) days in advance of each Common Assessment period. Written notice of any change in the amount of the annual Common Assessment shall be sent to every Owner subject thereto, at least thirty (30) days prior to the effective date of such change. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer or agent of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments against a Lot is binding upon the Association as of the date of its issuance.

The Board of Trustees shall cause to be prepared an annual balance sheet and operating statement reflecting income and expenditures of the Association for each fiscal year, including deposits and withdrawals from the Common Area Reserve Fund and the Operating Fund, and shall cause to be distributed a copy of each such statement to each Owner, and to each first Mortgagee who has filed a written request for copies of the same with the Board of Trustees, in a manner provided in the Bylaws of the Association. At least

sixty (60) days prior to the beginning of each fiscal year, the Board of Trustees shall prepare and distribute to the membership of the Association, a written, itemized estimate (budget) of the expenses to be incurred by the Association during such year in performing its functions under this Declaration (including a reasonable provision for contingencies and deposits into the Common Area Reserve Fund, less any expected income and accounting for any surplus from the prior year's respective Association Maintenance Fund.)

Each annual Common Assessment shall constitute an aggregate of separate assessments for each of the Association's Maintenance Funds, reflecting an itemization of the amounts assessed and attributable to prospective deposits into the Common Area Reserve Fund, the Operating Fund and any other Association Maintenance Funds established by the Association. If the estimated sums prove inadequate for any reason, including nonpayment of any Owner's annual Common Assessment, the Board may, at any time, levy Supplemental Common Assessments for any of the Association's Maintenance Funds which shall be assessed equally against the Owner of each Lot in the Properties.

Each annual Common Assessment may be paid by the Owner to the Association in one check or payment or in separate checks, as payments attributable to deposits into specified Maintenance Funds. In the event that any installment of a Common Assessment payment is less than the amount assessed and the payment does not specify the Association Maintenance Fund or Funds into which it should be deposited, the receipt by the Association from the Owner shall be credited in order of priority first to the Operating Fund, until that portion of the Common Assessment has been satisfied, and second to the Common Area Reserve Fund.

At the end of any fiscal year of the Association, the Owners may determine that all excess funds remaining in the Operating Fund, over and above the amounts used for the operation of the Properties, may be returned to the Members proportionately, or may be retained by the Association and used to reduce the following year's Common Assessments. Notwithstanding anything contained in the Articles or Bylaws to the contrary, if prior to dissolution of the Association the Association has not obtained tax exempt status from both Federal and State government, then the Common Area Reserve Funds shall be distributed to or for the benefit of the Members in a proportion equal to their individual, respective contributions.

Section 6.08. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments herein:

- (a) All Properties dedicated to and accepted by a local public authority; and
- (b) The Common Area.

## ARTICLE VII

### Effect of Non-Payment of Assessments Remedies of the Association

Section 7.01. Effect of Non-Payment of Assessments: Remedies of the Association. Any installment of a Common Assessment, Capital Improvement Assessment, Special Assessment or Reconstruction Assessment not paid within fifteen (15) days after the due date shall bear interest from the due date of such installment at the rate of 15 percent (15%) per annum. If any installment of an assessment is not paid within fifteen (15) days after it is due, the Owner responsible therefore may be required further by the Board of Trustees to pay a late charge of two dollars (\$2.00) or two percent (2%) of the amount of the delinquent installment, whichever is greater, for each day thereafter that any installment of an assessment remains unpaid. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Lot. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot or Limited Common Area. If any installment of a Common Assessment is not paid within thirty (30) days after its due date, the Board shall mail an acceleration notice to the Owner and to each first Mortgagee of a Lot which has requested a copy of the notice. The notice shall specify (1) the fact that the installment is delinquent, (2) a date, not less than fifteen (15) days from the date the notice is mailed to the Owner, by which such default must be cured, and (3) that failure to cure the default on or before the date specified in the notice may result in acceleration of the balance of the installments of the Common Assessment for the then current fiscal year and sale of the Lot. If the delinquent installments of Common Assessments and any charges thereon are not paid in full on or before the date specified in the notice, the Board at its option may declare all of the unpaid balance of the annual Common Assessment to be immediately due and payable without further demand and may enforce the collection of the full Common Assessment and all other charges thereon in any manner authorized by law and this Declaration.

Section 7.02. Notice of Default. No action shall be brought to enforce any assessment lien herein, unless at least fifteen (15) days have expired following the date a Notice of Default is deposited in the United States mail, certified or registered, postage prepaid, to the Owner of the Lot, and a copy thereof has been recorded by the Association in the office the County Recorder in which the Properties are located; said Notice of Default must recite a good and sufficient legal description of any such Lot, the record Owner or reputed Owner thereof, the amount claimed (which may at the Association's option include interest on the unpaid assessment at fifteen percent (15%) per annum, any late charges accrued, plus reasonable attorney's fees and expenses of collection in connection with the debt secured by said lien), and the name and address of the claimant. Such Notice of Default shall be signed and acknowledged by an officer of the Association and said liens shall be prior to any declaration of homestead recorded after the date on which this Declaration is recorded. The lien shall continue until fully paid or otherwise satisfied.

Section 7.03. Foreclosure Sale. Any such sale provided for above may be conducted by the Board of Trustees, its attorneys or other persons authorized by the Board of Trustees, its attorneys or other persons authorized by the Board in accordance with the provisions of the Utah Code Annotated, 1953 as amended, applicable to the exercise of powers of sale in deeds of trust, or in any other manner permitted by law. The Association, through duly authorized agents, shall have the power to bid on the Lot at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same.

Section 7.04. Curing of Default. Upon the timely curing of any default for which a Notice of Assessment was filed by the Association, the officers thereof shall record an appropriate Release of Lien, upon payment by the defaulting Owner of a fee, to be determined by the Association, but not to exceed One Hundred Dollars (\$100.00), to cover the cost of preparing and recording such release. A certificate executed and acknowledged by any two (2) members of the Board stating the indebtedness secured by the liens upon any Lot created hereunder shall be conclusive upon the Association and the Owners as to the amount of such indebtedness as of the date of the certificate, in favor of all persons who rely thereon in good faith. Such certificate shall be furnished to any Owner upon request at a reasonable fee, not to exceed Twenty Dollars (\$20.00).

Section 7.05. Cumulative Remedies. The assessment liens and the rights to foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid assessments, as above provided.

Section 7.06. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first Mortgage (meaning any recorded mortgage with first priority or seniority over other mortgages) made in good faith and for value and recorded prior to the date on which the assessment came due. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or deed in lieu thereof, shall extinguish the lien of such assessments as to installments which became due prior to such sale or transfer. However, no sale or transfer shall relieve such Lot from liability for any installments or assessments thereafter becoming due or from the lien thereof.

## ARTICLE VIII

### Architectural Control

Section 8.01. Members of Committee. The Architectural Committee sometimes referred to in this Declaration as the "Committee", shall consist of three (3) members. The initial members of the Committee shall consist of representatives of Declarant. Each of said persons shall hold office until the election of the first Board of Trustees by the membership of the Association. Thereafter, new members of the Committee shall be appointed by the Board of Trustees and shall hold office until such time as they have resigned or has been removed or

their successors have been appointed, as provided herein. The Board of Trustees shall have the right to appoint and remove all members of the Committee.

Section 8.02. Review of Proposed Construction. Subject to Article X, Section 8.09, of this Declaration and in compliance with local laws, regulations and ordinances, no building, fence, wall, patio cover or other structure shall be commenced, painted, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and color and location in relation to surrounding structures and topography by the Architectural Committee. The Committee shall approve proposals or plans and specifications submitted for its approval only if it deems that the construction, alterations or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of the surrounding area of the Properties as a whole, that the appearance of any structure affected thereby will be in harmony with the surrounding structures, and that the upkeep and maintenance thereof will not become a burden on the Association. The Committee may condition its approval of proposals or plans and specifications on such changes therein as it deems appropriate, and may require submission of additional plans and specifications or other information prior to approving or disapproving material submitted. The Committee may also issue rules or guidelines setting forth procedures for the submissions of plans for approval, requiring a fee payable to the Association to accompany each application for approval, or additional factors which it will take into consideration in reviewing submissions. The Committee may provide that the amount of such fee shall be uniform, or that it be determined in any other reasonable manner, such as by the reasonable cost of the construction, alterations or additions contemplated, provided that in no event shall such fee exceed Two Hundred Dollars (\$200.00). The Committee may require such detail in plans and specifications submitted for its review as it deems proper, including, without limitation, floor plans, site plans, drainage plans, elevation drawings and description or samples of exterior material and colors. Until receipt by the Committee of any required plans and specifications, the Committee may postpone review of any plans submitted for approval.

Section 8.03. Meetings of the Committee. The Committee shall meet from time to time as necessary to perform its duties hereunder. The Committee may from time to time, by resolution unanimously adopted in writing, designate a Committee Representative (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the Committee, except the granting of variances pursuant to Section 8.08 hereof. In the absence of such designation, the vote of any two (2) members of the Committee taken without a meeting, shall constitute an act of the Committee.

Section 8.04. No Waiver of Future Approvals. The approval of the Committee to any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval and consent of the Committee shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar

proposals, plans and specifications, drawings or matter whatever subsequently or additionally submitted for approval or consent.

Section 8.05. Compensation of Members. The members of the Committee shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of their duties hereunder.

Section 8.06. Inspection of Work. Inspection of work and correction of defects therein shall proceed as follows:

(a) Upon the completion of any work for which approved plans are required under this Article VIII, the Owner shall give written notice of completion to the Committee.

(b) Within sixty (60) days thereafter, the Committee or its duly authorized representative may inspect such Improvement. If the Committee finds that such work was not done in substantial compliance with the approved plans it shall notify the Owner in writing of such noncompliance within such sixty-day period, specifying the particulars of noncompliance, and shall require the Owner to remedy the same.

(c) If upon the expiration of thirty (30) days from the date of such notification the Owner shall have failed to remedy such noncompliance, the Committee shall notify the Board in writing of such failure. Upon Notice and Hearing the Board shall determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a noncompliance exists, the Owner shall remedy or remove the same within a period of not more than forty-five (45) days from the date of announcement of the Board ruling. If the Owner does not comply with the Board ruling within such period the Board, at its option, may either remove the noncomplying improvement or remedy the noncompliance, and the Owner shall reimburse the Association, upon demand, for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the Owner to the Association, the Board shall levy a Special Assessment against such Owner for the reimbursement.

(d) If for any reason the Committee fails to notify the Owner of any noncompliance within sixty (60) days after receipt of said written notice of completion from the Owner, the Improvement shall be deemed to be in accordance with said approved plans.

Section 8.07. Non-Liability of Committee Members. Neither the Committee nor any member thereof, nor its duly authorized Committee representative shall be liable to the Association or to any Owner for any loss, damage or injury arising out of or in any way connected with the performance of the Committee's duties hereunder, unless due to the willful misconduct or bad faith of the Committee. The Committee shall review and approve or disapprove all plans submitted to it for any proposed improvement, alteration or addition, solely on the basis of aesthetic considerations and the overall benefit or detriment which would result to the immediate vicinity and the Properties generally. The Committee shall take into



consideration the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes, excepting that the Committee hereby waives the non-liability provision of this paragraph to the extent necessary to obtain insurance as provided for in Article XIII hereof.

Section 8.08. Variance. The Committee may authorize variances from compliance with any of the architectural provisions of this Declaration or any supplemental declaration, including restrictions upon height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may require. Such variances must be evidenced in writing, must be signed by at least two (2) members of the Committee. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration or any Supplemental Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration or of any Supplemental Declaration for any purpose except as to the particular property and particular provisions hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting his use of the premises, including but not limited to zoning ordinances and Lot set-back lines or requirements imposed by any governmental or municipal authority.

Section 8.09. Fences and Sign Barriers. No fence, wall or sight barrier shall be erected without the prior written approval of the Architectural Committee on any Owner's Lot or on the perimeter boundary thereof except for a hedge or other plant barrier acceptable to the Architectural Committee; provided that Declarant shall be exempt from the limitations imposed herein on fences, walls and sight barriers constructed by Declarant on the Properties. All fences will be subject to the ordinances and regulations of the City of South Salt Lake whether constructed by an Owner or the Declarant.

## ARTICLE IX

### Maintenance and Repair Obligations

Section 9.01. Structural Maintenance Areas. No improvement, excavation or work which in any way alters the Structural Maintenance Areas from their natural or existing state on the date any such area is conveyed by Declarant to a purchaser of a Lot shall be made or done by any person other than the Association or its authorized agents except as provided in Article IX, Section 9.02, of this Declaration.

Section 9.02. Maintenance Obligations of Owners. Subject to the duty of the Association to provide for maintenance as provided in Article IX, Section 9.03, of this Declaration, it shall be the duty of each Owner, at his sole cost and expense, subject to the provisions of this Declaration, regarding the Architectural Committee approval, to maintain,

repair, replace and restore his Lot and all improvements thereon including, but not limited to, all Structural Maintenance Areas, in a neat, sanitary and attractive condition. In the event that any Owner shall permit any Improvement, which is the responsibility of such Owner to maintain, to fall into disrepair or not to be so maintained so as to create a dangerous, unsafe, unsightly or unattractive condition, or to otherwise violate this Declaration, the Architectural Committee shall have the right, but not the duty, upon fifteen (15) days prior notice to the Owners of such Lot, to correct such condition and to enter upon such Owner's Lot to make such repairs or to perform such maintenance and the cost thereof shall be charged to the Owner. Said cost shall be a Special Assessment and shall create a lien enforceable in the same manner as other assessments as set forth in this Declaration. The Owner shall pay promptly all amounts due for such work, and the costs and expenses of collection may be added, at the option of the Board of Trustees, to the amounts payable by each Owner as Common Assessments.

Section 9.03. Maintenance Obligations of Association. In addition to the provisions of Section 9.02 of this Article, the Association shall maintain, or provide for the maintenance of all of the Common Area and Limited Common Area and all improvements thereon in good order and repair, and shall likewise provide for painting, minor repair, and replacement as necessary of the perimeter sight barrier fences, any other Common Area fences, commonly metered utilities, common storage areas, and any and all utility laterals. In addition to building maintenance, the Association shall provide all necessary landscaping and gardening to properly maintain and periodically replace when necessary the trees, plants, grass and other vegetation which is on the Common Area at the time that it is conveyed to the Association. The Association shall further maintain, reconstruct, replace and refinish any paved surface in the Common Area. All of the foregoing obligations of the Association shall be discharged when and in such manner as the Board of Trustees of the Association shall determine in their judgment to be appropriate.

Section 9.04. Damage and Destruction Affecting Residences -- Duty to Rebuild. If all or any portion of any Lot or Dwelling Unit is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner of said Lot or Dwelling Unit to rebuild, repair or reconstruct said residence in a manner which will restore it substantially to its appearance and condition immediately prior to the casualty.

Section 9.05. Variance in Exterior Appearance and Design. Any Owner who has suffered damage may apply for approval to the Architectural Committee for reconstruction, rebuilding or repair of his residence in a manner which will provide for an exterior appearance and design different from that which existed prior to the date of the casualty. Application for such approval shall be made in writing together with full and complete plans and specifications, working drawings and elevations showing the proposed reconstructions and the end result thereof. The Architectural Committee shall grant such approval only if the design proposed by the Owner should result in a finished residence in harmony with the exterior design of other residences on the Properties. Failure of the Architectural Committee to act within thirty (30) days after receipt of such a request in writing coupled with the drawings and plot plans showing the full and complete nature of the proposed changes shall constitute approval thereof. If the

obligation for repair falls upon the Association, Architectural Committee approval will not be required prior to the commencement of such work.

Section 9.06. Time Limitation. The Owner of any damaged residence, the Association and the Architectural Committee shall be obligated to proceed with all due diligence hereunder, and the responsible party shall commence reconstruction within one (1) year after damage occurs, unless prevented by caused beyond their reasonable control.

## ARTICLE X

### Use Restrictions

All real property within the Properties shall be held, used and enjoyed subject to the following limitations and restrictions, subject to the exemption of Declarant in Section 10.12 hereof:

Section 10.01. Single Family Residence. Subject to Section 10.03 of this Article X, each Lot shall be used as a residence for a single family and no other purpose. Owners are specifically authorized to lease or rent the residences for single family occupancy. It is contemplated that Declarant will be allocated certain low-income housing credits, with respect to some or all of the Lots, pursuant to an agreement between Declarant and Utah Housing Finance Agency ("Agreement"). So long as such Agreement is in effect with respect to the Properties, Declarant and all Owners agree to maintain the Properties in compliance with Section 42 of the Internal Revenue Code of 1986 and all other applicable law pertaining to such Agreement.

Section 10.02. Business or Commercial Activity. Subject to Section 10.03 of this Article X, no part of the Properties shall ever be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending or other such non-residential purposes; except Declarant, its successors or assigns, may use any portion of the Properties for a model home site, and display and sales office during the construction and sales period in accordance with Article II, Section 2.1(f), of this Declaration, and excepting home occupations as defined by the ordinances of the City of South Salt Lake without external evidence thereof, for so long as such occupations are in conformance with ordinances of the City of South Salt Lake and are merely incidental to the use of the Dwelling Unit as a residential home.

Section 10.03. Real Estate Business. No Dwelling Unit, Lot, Improvement or portion of the Common Area shall be used in the conduct of any real estate business, gainful occupation, profession, trade, office or other non-residential activity; PROVIDED, HOWEVER, that Declarant, or its designees, shall have the non-exclusive right, subject to the provisions of Article II, Section 2.01(f), of this Declaration, to use without additional cost the portions of any Lot or Dwelling Unit owned by Declarant, or the Common Area for purposes of sales of Lots

within the Properties. Furthermore, as to any Lots owned by Declarant, Declarant shall have the unrestricted right to maintain model homes thereon for sales purposes.

Section 10.04. Nuisances. No noxious or offensive activity (including but not limited to the repair of motor vehicles) shall be carried on, in or upon any Lot or the Common Area, nor shall anything be done therein which may be or become an unreasonable annoyance or nuisance to any other Owner. No loud noises or noxious odors shall be permitted on the Properties, and the Board of Trustees shall have the right to determine in accordance with the Bylaws if any noise, odor, or activity producing such noise, odor or interference constitutes a nuisance. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes), noisy or smoky vehicles, large power equipment or large power tools, unlicensed off-road motor vehicles or other items which may unreasonably interfere with television or radio reception of any Owner in the Properties, shall be located, used or placed on any portion of the Properties, or exposed to the view of other Owners without the prior written approval of the Architectural Committee.

Section 10.05. Signs. No sign, poster, display, billboard or other advertising device of any kind shall be displayed to the public view on any portion of the Properties or any Lot, without the prior written consent of the Architectural Committee, except one sign for each Dwelling Unit, of not more than three (3) feet by two (2) feet, plain white with black block letters, advertising the property for sale or rent, or except signs, regardless of size, used by Declarant, its successors or assigns, to advertise the Properties during the construction and sale period. All signs or billboards and the conditions promulgated for the regulation thereof shall conform to the requirements of the South Salt Lake ordinances.

Section 10.06. Parking and Vehicular Restrictions. No Owner of a Lot shall park, store or keep any vehicle except wholly within the parking area designated therefore, and any inoperable vehicle shall be stored only in covered carports. No Owner shall park, store or keep on any property or street (public or private) within the Properties any large commercial-type vehicle (dump truck, cement mixer truck, oil or gas truck, delivery truck and any other vehicular equipment, mobile or otherwise, deemed to be a nuisance by the Board), any recreational vehicle (camper unit, motor home, truck, trailer, boat, mobile home or other similar vehicle), upon any uncovered parking space, so as to be visible from anywhere in the Properties, except as otherwise provided by the Board of Trustees. The above excludes camper trucks up to and including three-quarter ton when used for everyday type transportation and subject to approval by the Board of Trustees. No Owner of a Lot shall conduct major repairs or major restorations of any motor vehicle, boat, trailer, aircraft, or other vehicle upon any portion of any Lot or upon the Common Area.

Section 10.07. Animal Restriction. No animals, livestock, reptiles or poultry of any kind shall be raised, bred or kept on any Lot or the Common Area, except usual and ordinary dogs, cats, fish, birds and other household pets may be kept on Lots subject to rules and regulations adopted by the Association, provided that they are not kept, bred or maintained for

commercial purposes, or in unreasonable quantities. As used in this Declaration, "unreasonable quantities" shall ordinarily mean more pets per household than is allowed by the ordinances of the City of South Salt Lake, provided that the Association (or the Architectural Committee or such other person or entity as the Association from time to time designate) may determine that a reasonable number in any instance may be more or less. The Association, acting through the Board of Trustees, shall have the right to prohibit maintenance of any animal which constitutes, in the opinion of the Board, a nuisance to any other Owner. Animals belonging to Owners, occupants or their licensees, tenants or invitees within the Properties must be either kept within an enclosure, an enclosed patio or on a leash being held by a person capable of controlling the animal. The enclosure must be so maintained that the animal cannot escape therefrom and shall be subject to the approval of the Architectural Committee. Should any animal belonging to an Owner be found unattended out of the enclosure and not being held on a leash by a person capable of controlling the animal, such animal may be removed by Declarant (for so long as it owns any interest in the Properties) or a person designated by Declarant to do so, to a pound under jurisdiction of the local municipality in which the Properties are situated and subject to the laws and rules governing said pound, or to a comparable animal shelter. Furthermore, any Owner shall be absolutely liable to each and all remaining Owners, their families, guests, tenants and invitees, for any unreasonable noise or damage to person or property caused by any animals brought or kept upon the Properties by an Owner or by members of his family, his tenants or his guests; and it shall be the absolute duty and responsibility of each such Owner to clean up after such animals which have used any portion of the Common Area.

Section 10.08. Trash. No rubbish, trash or garbage or other waste material shall be permitted upon any Lot or Common Area, except in sanitary containers located in appropriate areas to arise therefrom so as to render the Properties or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. There shall be no exterior fires whatsoever except barbecue fires contained within receptacles therefore and fire pits located to the rear of any Dwelling Unit on any Lot designed in such a manner that such fire pits do not create a fire hazard. No clothing or household fabrics shall be hung, dried or aired in such a way in the Lots as to be visible from other Lots, and no lumber, grass, shrub or tree clippings or plant waste, metals, bulk material or scrap, or refuse or trash shall be kept, stored or allowed to accumulate on any portion of the Properties except within an enclosed structure or appropriately screened from view.

Section 10.09. View Obstructions. No fence, hedge, wall or other dividing instrumentality over six feet (6') in height measured from the ground on which it stands shall be constructed or maintained on any Lot, except that Declarant may vary or exceed said height or location of any fence in accordance with its architectural plans up to the six feet height maximum allowed by the City of South Salt Lake. Each Owner by accepting a deed to the Lot hereby acknowledges that any construction by Declarant may impair the view of such Owner and hereby consents to such impairment.

Section 10.10. Temporary Buildings. No outbuilding, basement, tent, shack, shed or other temporary building or improvement of any kind shall be placed upon any portion of the

Properties either temporarily or permanently. No garage, trailer, camper, motor home or recreational vehicle shall be used as a residence in the Properties, either temporarily or permanently.

Section 10.11. Common Area Facilities. Nothing shall be altered or constructed in or removed from the Common Area except upon the written consent of the Association.

Section 10.12. Declarant Exemption. Declarant or its successors or assigns may undertake the work of constructing Dwelling Units and developing all of the Lots included within the Properties. The completion of that work and sale, rental and other disposal of Dwelling Units is essential to the establishment and welfare of said property as a residential community. As used in this Section and its subparagraphs, the words "its successors or assigns" specifically do not include purchasers of Lots improved with completed Dwelling Units. In order that said work may be completed and the Properties be established as a fully occupied residential community as rapidly as possible, no Owner nor the Association shall do anything to interfere with, and nothing in this Declaration shall be understood or construed to:

(a) Prevent Declarant, its successors or assigns, or its or their contractors or subcontractors, from doing on any Lot owned by Declarant whatever they determine to be necessary or advisable in connection with the completion of said work, including without limitation the alteration of its construction plans and designs as Declarant deems advisable in the course of development; or

(b) Prevent Declarant, its successors or assigns, or its or their representatives, from erecting, constructing and maintaining on any Lot, or portion thereof, owned or controlled by Declarant, or its successors or assigns or its or their contractors or subcontractors, such structures as may be reasonably necessary for the conduct of its or their business of completing said work and establishing the Properties as a residential community and disposing of the same in Lots by sale, lease or otherwise; or

(c) Prevent Declarant, its successors or assigns, or its or their contractors or subcontractors, from conducting on any Lot, or any portion thereof, owned or controlled by Declarant, or its successors or assigns or its business of developing, subdividing, grading and constructing Dwelling Units and other improvements in the Properties as a residential community and of disposing of Dwelling Units thereon by sale, lease or otherwise; or

(d) Prevent Declarant, its successors or assigns, or its or their contractors or subcontractors, from maintaining such sign or signs on any Lot owned by or controlled by it as may be necessary in connection with the sale, lease or other marketing of Lots and Dwelling Units in the Properties; or

(e) Prevent Declarant, at any time prior to acquisition of title to a Lot in the Properties by a purchaser from Declarant to establish on the Properties additional licenses, reservations, and rights-of-way to itself, to utility companies, or to others as may from time to

time be reasonably necessary to the proper development and disposal of the Properties. Declarant shall repair at his own cost or expense any damage caused by Declarant to the Common Area as well as such damage caused to Lots or property still under Declarant's control.

Section 10.13. Outside Installations. No radio station or shortwave operators of any kind shall operate from any Lot or Dwelling Unit unless approved by the Board of Trustees. Exterior radio antenna, television antenna, or other antenna may be erected or maintained in the Properties, subject to the approval of the Architectural Committee.

Section 10.14. Insurance Rates. Nothing shall be done or kept in the Properties which will increase the rate of insurance on any property insured by the Association without the approval of the Board, nor shall anything be done or kept in the Properties which would result in the cancellation of insurance on any property insured by the Association or which would be in violation of any law.

Section 10.15. Drilling. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind, shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, or mineral excavations or shafts be permitted upon the surface of any Lot or within five hundred feet (500') below the surface of the Properties. No derrick or other structure designed for use in boring for water, oil or natural gas shall be erected, maintained or permitted upon any Lot.

Section 10.16. Further Subdivision. No owner shall further partition or subdivide his Lot; provided, however, that this provision shall not be construed to limit the right of an Owner (1) to rent or lease all or any portion of his Lot by means of a written lease or rental agreement subject to the restrictions of this Declaration, so long as the Lot is not leased for transient or hotel purposes; (2) to sell his Lot; or (3) to transfer or sell any Lot to more than one person to be held by them as tenants-in-common, joint tenants, tenants by the entirety or as community property. The terms of any such lease or rental agreement shall be subject in all respects to the provisions of this Declaration and Bylaws of the Association, and any failure by the lessee of such Lot to comply with the terms of this Declaration or the Bylaws of the Association shall constitute a default under the lease.

Section 10.17. Drainage. There shall be no interference with the established drainage pattern over the Properties, unless an adequate alternative provision is made for proper drainage and is first approved in writing by the Architectural Committee. For the purposes hereto, "established" drainage is defined as the drainage which exists at the time the overall grading of the Properties is completed by Declarant, or that which is shown on any plans approved by the Architectural Committee, which may include drainage from the Common Area over any Lot or Lots in the Properties.

Section 10.18. Water Supply System. No individual water supply, sewage disposal system, or water softener system shall be permitted on any Lot in the Properties unless each system is designed, located, constructed and equipped in accordance with the requirements,

standards and recommendations of the governing Health Department, the Architectural Committee, and all other applicable governmental authorities.

## ARTICLE XI

### Party Fences and Party Walls

Section 11.01. Non-Party Fences. Each fence which is built as part of the original construction of the Properties and which is constructed in the Common Area shall not be considered to be a party fence as such term is used herein. The Association shall be responsible for reasonable maintenance thereof, as provided herein.

Section 11.02. General Rules of Law to Apply to Party Fences. Any fence constructed by the Owners and each hedge planted by the Owners by agreement among themselves, on the Lot line between adjoining Lots, with the prior approval of the Architectural Committee shall be called "Party Fences" and shall be subject to this Article XI. To the extent not inconsistent with the provisions of this Article XI, the general rules of law regarding Party Fences and liability for property damage to negligence or willful acts or omissions shall apply thereto. The Owner of each Lot adjoining a Party Fence shall be an "Owner" of the fence for the purposes of this Article.

Section 11.03. General Rules of Law to Apply to Party Walls. Each wall which is built as a part of the original construction of the Dwelling Units upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article XI, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. The Owner of each Lot adjoining a Party Wall shall be an "Owner" of the wall for purposes of this Article.

Section 11.04. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a Party Fence and Party Wall shall be shared by the Owners in proportion to their ownership thereto.

Section 11.05. Destruction by Fire or Other Casualty. If a Party Fence or a Party Wall is destroyed or damaged by fire or other casualty, any Owner thereof may restore it, and the other Owners thereof shall contribute to the cost of restoration thereof in proportion to such ownership without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 11.06. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article XI shall be appurtenant to the land and shall pass to such Owner's successors-in-interest.



Section 11.07. Arbitration. In the event any dispute arises concerning a Party Fence or a Party Wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all of the arbitrators.

## ARTICLE XII

### Damage or Destruction to Common Area

Damage to or destruction of all or any portion of the Common Area shall be handled in the following manner, notwithstanding any provision in this Declaration to the contrary:

(a) In the event of damage or destruction to the Common Area, the Association shall cause such Common Area to be repaired and reconstructed substantially as it previously existed.

(b) If the insurance proceeds are insufficient to effect total restoration, then the Association shall cause such Common Area to be repaired and reconstructed substantially as it previously existed and the difference between the insurance proceeds and the actual cost shall be levied as a Reconstructional Assessment equally against each of the Lot Owners in accordance with provisions of Article VI, Section 6.04, of this Declaration.

(c) Each Owner shall be liable to the Association for any damage to the Common Area not fully covered by insurance which may be sustained by reason of the negligence or willful misconduct of said Owner or of his family and guests, both minor and adult. Notwithstanding the foregoing, the Association reserves the right to charge a Special Assessment equal to the increase, if any, in the insurance premium directly attributable to the damage caused by such Owner. In the case of joint ownership of a Lot, the liability of such Owners shall be joint and several, except to the extent that the Association has previously contracted in writing with such joint owners to the contrary. The cost of correcting such damage shall be a Special Assessment against the Lot and may be collected as provided herein for the collection of Common Assessments.

## ARTICLE XIII

### Insurance

Section 13.01. Common Area. The Association shall keep all buildings, improvements, fixtures, and all other insurable property of the Common Area and Limited Common Area insured against loss or damage by fire for the full insurance replacement cost thereof, and shall obtain insurance against such other hazards and casualties as the members of the Association deem desirable, including extended coverage for not less than 100% of the replacement cost of insurable common property. The Association may also insure any other property whether real or personal owned by the Association, against loss or damage by fire and

such other hazards as the Association may deem desirable, with the Association as the Owner and beneficiary of such insurance. The insurance coverage with respect to the Common Area shall be written in the name of, and the proceeds thereof shall be payable to the Association for the benefit of the Owners. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are Common Expenses included in the Common Assessments made by the Association.

Section 13.02. Insurance Obligations of Owners. Each Owner shall obtain and maintain on his entire Dwelling Unit, any other improvements, fixtures, and all other insurable property on his Lot (hereinafter referred to as the "Insurable Premises") extended coverage at least equal to that commonly required by private institutional mortgage investors in the area in which the Properties are located. The policy shall provide, as a minimum, fire and extended coverage insurance on a replacement cost basis in an amount not less than that necessary to comply with any co-insurance percentage stipulated in the policy, but not less than eighty percent (80%) of the insurable value (based upon replacement cost of the Insurable Premises). Except for insurance under the National Flood Insurance Act of 1968, as amended, and for deductibles, as permitted below, the amount of coverage shall be sufficient so that in the event of any damage or loss to the Insurable Premises of a type covered by the insurance, the insurance proceeds shall provide at least the lesser of (i) compensation equal to the full amount of damage or loss, or (ii) compensation to any first Mortgagee under a Mortgage on the Lot equal to the full amount of the unpaid principal balance of the mortgage loan. All buildings on any Lot valued at \$1,000 and over must be insured.

If the area is hereafter identified by the Secretary of Housing and Urban Development as an area having special flood hazards, flood insurance shall be maintained in the amount of the outstanding principal balance of any mortgage loan on the Lot or the maximum limit of coverage available under the National Flood Insurance Act of 1968, as amended, whichever is less.

Policies containing a deductible clause up to \$250 applicable to either fire or extended coverage, or both, are acceptable if such provisions are mandatory or commonly acceptable to private institutional mortgage investors in the area in which the Properties are located. If a policy contains a fall of building clause, such clause must be waived.

Section 13.03. Replacement or Repair of Property. In the event of damage to or destruction of any part of the Common Area or Limited Common Area, or other improvements in the Properties insured by the Association, the Association shall repair or replace the same from the insurance proceeds available, subject to the provisions of Article XII of this Declaration. If such insurance proceeds are insufficient to cover the costs of such repair or replacement of the property damaged or destroyed, the Association may make a Reconstruction Assessment against all Lot Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other Common Assessments made against such Lot Owners, in accordance with the provisions of Article VI, Section 4, of this Declaration. In the

event of total destruction of all of the Improvements in the Properties, the proceeds of the insurance carried by the Association shall be divided proportionately among the Lot Owners, such proportion being based upon the original base sales price of each improved Lot at the time it was initially sold by Declarant, provided that the balance then due on any valid encumbrance of record shall be first paid in order of priority, before the distribution of any proceeds to an Owner whose Lot is so encumbered.

Section 13.04. Waiver of Subrogation. As to each policy of insurance maintained by the Association, which will not be voided or impaired thereby, the Association hereby waives and releases all claims against the Board, the Owners, the Manager, Declarant, and the agents and employees of each of the foregoing with respect to any loss covered by such insurance, whether or not caused by negligence or of breach of any agreement by said persons, but only to the extent that insurance proceeds are received in compensation for such loss.

Section 13.05. Liability Insurance. The Association shall obtain comprehensive public liability insurance, including medical payments, liquor liability insurance and malicious mischief, in the amount of at least \$1,000,000 per occurrence for personal injury and/or property damage arising from the activities of the Association or with respect to property under its jurisdiction, including, if obtainable, a cross-liability endorsement insuring each insured against liability to each other insured. Such insurance shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from deeming the claim of a Lot Owner because of negligent acts of the Association or other Lot Owners. Such insurance must include other coverage in kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location and use.

(a) Minimum Financial Rating of Carrier. Each hazard insurance policy must be written by a hazard insurance carrier which has a financial rating by Best's Insurance Reports of Class VI or better. Hazard insurance policies are also acceptable from insurance carrier which has a financial rating by Best's Insurance Reports of Class V, provided it has a general policy holder's rating of at least A. Each carrier must be specifically licensed or authorized by law to transact business within the state of Utah.

(b) No Assessment. Policies are unacceptable where: (i) under the terms of the carrier's charter, bylaws or policy, contributions or assessments may be made against any Lot Owner, his first Mortgagee 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, policy holders, or members; or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent any Lot Owner or his first Mortgagee from collecting insurance proceeds.

(c) Other Requirements. All policies of hazard insurance must contain or have attached the standard mortgagee clause commonly accepted by private institutional mortgage investors in the area in which the Properties are located. The mortgagee clause must provide that the insurance carrier shall notify the "Lenders" (as hereinafter defined) at least ten days in advance of the effective date of any reduction in or cancellation of the policy.

Section 13.06. Fidelity Coverage. The Association shall obtain fidelity coverage against dishonest acts on the part of directors, managers, trustees, employees or volunteers responsible for handling funds collected and held for the benefit of the Lot Owners or the Association. The fidelity bond or insurance must name the Association as the named insured and shall be written in an amount sufficient to provide protection which is in no event less than one and one-half times the insured's estimated annual operating expenses and reserves. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.

Section 13.07. Other Insurance and General. The Association may also obtain, through the Board, Worker Compensation Insurance and other liability insurance as it may deem desirable insuring each Lot Owner and the Association, the Board of Trustees and the manager from liability in connection with the Common Area, the premiums for which shall be Common Expenses included in the Common Assessments made against the Owners. Such insurance policies shall have severability of interest clauses or endorsements which shall preclude the insurer from denying the claim of the Lot Owner because of the negligent acts of the Association or other Lot Owners.

All policies shall be reviewed at least annually by the Board of Trustees including an evaluation of the adequacy of the policy by a qualified representative of the insurance company writing the policies maintained by the Association and the limits of such policies may be increased at the discretion of the Board of Trustees.

Notwithstanding any other provisions herein, the Association shall continuously maintain in effect such casualty, flood and liability and bonds and other insurance meeting the requirements for planned unit developments established by Federal National Mortgage Association (FNMA), the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corp. FHLMC, FHA and VA (collectively "Lenders"), so long as there are any mortgages on any of the Properties that have been purchased, insured or guaranteed, as the case may be, by Lenders.

#### ARTICLE XIV

##### Mortgage Protection Clause

Notwithstanding any and all provisions hereof to the contrary, in order to induce Lenders to participate in the financing of the sale of Lots within the Properties, the following provisions are added hereto (and to the extent these added provisions conflict with any other provisions of the Declaration, these added provisions shall control):

(i) Each first Mortgagee of a Mortgage encumbering any Lot, at his written request, is entitled to written notification from the Association of any default by the Mortgageor

of such Lot in the performance of such Mortgagor's obligations under this Declaration, the Articles of Incorporation of the Association or the Bylaws of the Association, which default is not cured within thirty days after the Association learns of such default.

(b) Any first Mortgagee, first Mortgage purchaser, successor or assigns, that obtains title to any Lot pursuant to the remedies provided in the mortgage or foreclosure of the mortgage, or pursuant to a deed given in lieu of foreclosure, will not be liable for such unit's unpaid dues or charges which accrue prior to the acquisition of title to such unit by the Mortgagee.

(c) Each first Mortgagee of a Mortgage encumbering any Lot, or any first Mortgage purchaser, successor or assigns, and any owner of a Lot, or such first Mortgagee, its purchaser, successor or assigns, that obtains title to such Lot pursuant to the remedies provided in a Mortgage or by foreclosure of a Mortgage or by deed in lieu of foreclosure, shall not be liable for and shall take title to such Lot free and clear of any claims of unpaid assessments of charges against such Lot which accrued prior to the acquisition of title to such Lot by the Mortgagee.

(d) Unless at least two-thirds (2/3) of the first Mortgagees (based upon one vote for each Mortgage owned) of the individual Lots have given their prior written approval, the Association shall not be entitled to:

(1) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the common property owned, directly or indirectly, by such Association for the benefit of the Lot Owners in the Association. This provision shall include, but not be limited to the Common Area. (The granting of easements for public utilities or for other public purposes consistent with the intended use of such common property by the Association shall not be deemed a transfer within the meaning of this clause);

(2) change the method of determining the obligations, assessments, dues or other charges which may be levied against the Lot Owner;

(3) by act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the maintenance of the common property walks or common fences and driveways, or the upkeep of lawns and plantings in the Association;

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

(5) use hazard insurance proceeds for losses to any common property for other than the repair, replacement or reconstruction of such common property.

(e) First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any common property located within the Common Area, and said mortgagee may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such common property within the Common Area and first mortgagees making such payments shall be owed immediate reimbursement therefore from the Association.

(f) No provision contained in this Declaration or in the Articles of Incorporation or Bylaws of the Association or in any other declaration that the Association shall hereinafter make shall give a Lot Owner, or any other party, priority over any rights of a first Mortgagee pursuant to its Mortgage in the case of a distribution to such Lot Owners of insurance proceeds or condemnation awards for losses to or a taking of common property.

(g) First Mortgagees shall have the right to examine the books and records of the Association during normal business hours.

(h) Association dues or charges shall include an adequate reserve fund for maintenance, repairs and replacement of those elements of the property in the Common Area that must be replaced on a periodic basis and are payable in regular installments rather than by special assessments.

(i) A first Mortgagee, upon request, is entitled to written notification from the Association of any default in the performance by the individual Lot Owner of any obligation under the Association's constituent documents which is not cured within sixty (60) days.

(j) Any agreement for professional management of the Association or any other contract providing for services of the Declarant, may not exceed 3 years. Any such agreement must provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice.

(k) In addition to the foregoing, the Board of Trustees may enter into such contracts or agreements on behalf of the Association as are required in order to satisfy the guidelines of the Lenders, or any similar entity, so as to allow for the purchase, insurance or guarantee, as the case may be, by such entities of first Mortgages encumbering Lots with Dwelling Units thereon. Each Owner hereby agrees that it will benefit the Association and the membership of the Association, as a class of potential Mortgage borrowers and potential sellers of the Dwelling Units if such agencies approve the Properties as a qualifying subdivision under their respective policies, rules and regulations, as adopted from time to time.

## ARTICLE XV

### General Provisions

Section 15.01. Enforcement. This Declaration, the Articles of Incorporation and the Bylaws may be enforced by the Association as follows:

(a) Breach of any of the covenants contained in the Declaration or the Bylaws and the continuation of any such breach may be enjoined, abated or remedied by appropriate legal proceedings by an Owner, by the Association or the successors-in-interest of the Association. Any judgment rendered in any action or proceeding pursuant hereto shall include a sum for attorney's fees in an amount as the court may deem reasonable, in favor of the prevailing party, as well as the amount of any delinquent payment, interest thereon, costs of collection and court costs.

(b) The result of every act or omission whereby any of the covenants contained in this Declaration or the Bylaws are violated in whole or in part is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance either public or private shall be applicable against every such result and may be exercised by any Owner, by the Association or its successors-in-interest.

(c) The remedies hereby provided for breach of the covenants contained in this Declaration or in the Bylaws shall be deemed cumulative, and none of such remedies shall be deemed exclusive.

(d) The failure of the Association to enforce any of the covenants contained in this Declaration or in the Bylaws shall not constitute a waiver of the right to enforce the same thereafter.

(e) A breach of the covenants, conditions or restrictions contained in this Declaration or in the Bylaws shall not affect or impair the lien or charge of any bona fide first Mortgage made in good faith and for value on any residential Lot or the improvements thereon, provided, however, that any subsequent Owner of such property shall be bound by said covenants, whether such Owner's title was acquired by foreclosure in a trustee's sale or otherwise.

Section 15.02. Severability. Invalidity of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 15.03. Term. The covenants, conditions and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and be enforceable by the Association or the Owner of any Lot or other Property subject to this Declaration, their respective legal representative, heirs, successors and assigns, perpetually so long as there are

mortgages against the Properties. Thereafter, the Owners of a majority of the Lots may sign and have recorded an instrument in writing agreeing to change such covenants and restrictions in whole or in part.

Section 15.04. Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community and for the maintenance of the Common Area. The Article and Section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine and neuter shall each include the masculine, feminine and neuter.

Section 15.05. Amendments. Subject to any rights of Lenders hereunder, this Declaration may be amended only by the affirmative vote or written consent of the Owners holding not less than sixty-seven percent (67%) of the voting power of each class of Members. Notwithstanding the foregoing, prior to the conveyance of the first Lot in the Properties, Declarant shall have the right to terminate or modify this Declaration by recordation of a supplement hereto setting forth such termination or modification in accordance with the laws of the State of Utah. For purposes of this Declaration, the conveyance shall be deemed to be the date upon which a deed conveying a Lot is recorded in the Office of the Salt Lake County Recorder.

Section 15.06. No Public Right or Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Properties to the public, or for any public use.

Section 15.07. Constructive Notice and Acceptance. Every person who owns, occupies or acquires any right, title, estate or interest in or to any Lot or other portion of the Properties does and shall be conclusively deemed to have consented and agreed to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to these restrictions is contained in the instrument by which such person acquired an interest in the Properties, or any portion thereof.

Section 15.08. Reservation of Easements. Reciprocal easements are hereby reserved for the benefit of adjoining Lot Owners for the control maintenance and repair of utility services the utilities adjoining Lot Owners, Declarant expressly reserves for the benefit of all of the real property in the Properties, and the Owners, reciprocal easements of access, ingress and egress over all Lots, and over the Common Area, for the use and enjoyment of the Lots in accordance with this Declaration, including without limitation for installation and repair of utility services, for drainage over, across and upon adjacent Lots for water resulting from the normal use of adjoining Lots, for maintenance and repair of any dwelling. Such easements may be used by Declarant, its successors, purchasers, and all Owners, their guests, tenants and invitees, residing on or temporarily visiting the Properties, for pedestrian walkways, vehicular access and such other purposes reasonably necessary for the use and enjoyment of a Lot and the Common Area.



No Owner of a Lot shall interfere with the established drainage pattern over his Lot from adjoining or other Lots. Each Owner of a Lot shall make adequate provisions for drainage in the event he changes the established drainage over his Lot. For purposes of this Declaration, "Established Drainage" on any Lot is defined as the drainage pattern and facilities in existence at the time that such Lot is conveyed to a purchaser from Declarant. In the event that any Dwelling Unit encroaches upon the Common Area as a result of construction, reconstruction, repair, shifting, settlement or movement of any portion of the Properties, a valid easement for encroachment and for the maintenance of the same shall exist so long as the encroachment exists. Declarant and the Lot Owners of each Lot on which there is constructed a Dwelling Unit along or adjacent to said Lot line shall have an easement appurtenant to said Lot, over the Lot line to and over the adjacent Lot, for the purpose of accommodating any natural movement or settling of any Dwelling Unit located on said Lot, any encroachment of any Dwelling Unit due to minor engineering or construction variances, and any encroachment of eaves, roof overhangs and architectural features as part of the original construction of any Dwelling Unit located on said Lot. Declarant reserves the right to grant exclusive easements over certain limited portions of the Common Area, if necessary, to certain Lot Owners for yard purposes. Declarant further expressly reserves for the benefit of the Association, its agents and employees, easements of access, ingress and egress, over the Lots and the Common Area for the purpose of maintaining, repairing and installing sewer pipelines and laterals, in accordance with the provisions of this Declaration, and as otherwise provided by law. Declarant, as well as Owners of Lots within the Properties, and all others who shall come in contact with the Properties covered hereby shall use reasonable restraints with regard to said Properties when exercising any rights granted under this paragraph, and due regard shall be given to the aesthetic value, beautification, upkeep and maintenance of all of said Properties; there shall not be any interference with the use, benefit and enjoyment of any Owner with their Lot.

Section 15.09. Notices. Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or to the residence of such person if no address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association.

Section 15.10. No Representations or Warranties. No representations or warranties of any kind, express or implied, have been given or made by Declarant or its agents or employees in connection with the Properties or any portion of the Properties, or any improvement thereon, its physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof as a planned unit development, except as specifically and expressly set forth in this Declaration.

Section 15.11. Conflict. In the event a conflict between this Declaration of Covenants, Conditions and Restrictions and Reservation of Easements, the Articles of Incorporation, or the

Bylaws of Stonecrest, a Planned Unit Development, these Declarations made herein shall be controlling.

DATED: 10/15/93

OAK FINANCIAL SERVICES, INC.

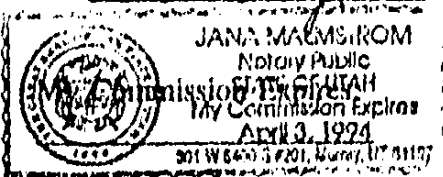
By: [Signature]  
President

ATTEST:

William C. Miller  
Secretary

STATE OF UTAH )  
: SS  
COUNTY OF SALT LAKE )

On the 15th day of October, 1993, personally appeared before me Lloyd Craft and William Miller, the President and Secretary of Oak Financial, a corporation of the State of Utah, who being by me duly sworn, did say that said instrument was signed in behalf of said corporation by authority of a resolution of its Board of Trustees and the said President and Secretary acknowledged to me that the said corporation executed the same.



[Signature]  
NOTARY PUBLIC  
Residing at: 301 W. 5100 S. #101

SCHEDULE A

REAL PROPERTY DESCRIPTION OF STONECREST

BEGINNING at a point North 00 degrees 10 feet 16 inches East 127.700 feet from the Southwest corner of Lot 16, Block 32, Ten Acre Plat "A", Big Field Survey, and running thence North 00 degrees 10 feet 16 inches East 152.500 feet; thence North 89 degrees 55 feet 51 inches East 353.200 feet; thence South 00 degrees 14 feet 09 inches West 152.468 feet; thence North 89 degrees 55 feet 32 inches East 353.028 feet to the point of beginning. Containing 53,844 square feet or 1.236 acres

SCHEDULE B

STONECREST, A PLANNED UNIT DEVELOPMENT

PHASE I

UNIT NO.	SQUARE FOOTAGE	APPURTENANT UNDIVIDED INTEREST IN COMMON AREAS
1	1200	6.250
2	1200	6.250
3	1200	6.250
4	1200	6.250
5	1200	6.250
6	1200	6.250
7	1200	6.250
8	1200	6.250
9	1200	6.250
10	1200	6.250
11	1200	6.250
12	1200	6.250
13	1200	6.250
14	1200	6.250
15	1200	6.250
16	1200	6.250
	<hr/> 19200	<hr/> 100 %