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DECLARATION
of
COVENANTS, CONDITIONS, RESTRICTIONS,
EASEMENTS, CHARGES AND LIENS
ON AND FOR
STONE GATE, A PLANNED COMMUNITY

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EXHIBITS

Exhibit A
Exhibit B

DECLARATION
OF
COVENANTS, CONDITIONS, RESTRICTIONS
EASEMENTS, CHARGES AND LIENS
FOR STONE GATE, A PLANNED COMMUNITY

This DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS, CHARGES AND LIENS is made and effective as of the 31st day of May, 2001, by STONE GATE, L.C., a Utah limited liability company (sometimes referred to herein as the "Declarant").

RECITALS:

A. Capitalized terms in this Declaration are defined in Article I.

B. The Declarant is the owner and developer of certain real property to be hereafter commonly known and described as the Stone Gate Community which is a master planned residential community consisting of an approximately 52-acre tract of land, as more fully described in Exhibit "A" attached hereto and made a part hereof (the "Community").

C. The City of Provo, Utah currently zones the Community as a Performance Development Overlay Zone (PD) in accordance with the Zoning Ordinance, hereinafter defined.

D. The Declarant desires to take advantage of the unique features of the Community, and proposes to establish and implement plans for residential living, recreation, aesthetic and quality-of-life considerations; as part of its development plan, Declarant intends, without obligation, to record Plats, to dedicate portions of the Community to the public for streets, roadways, and for general public use; and to potentially record various Neighborhood Declarations and Supplemental Declarations covering portions of the Community, which Neighborhood Declarations and/or Supplemental Declarations will designate the purposes for which such portions of the Community may be used and may set forth additional covenants, conditions, restrictions, assessments, charges, liens, reservations and easements applicable to such portions of the Community.

E. As part of the development of the Community, Declarant may, without obligation, sell various parcels or Lots included in the Community to different Merchant Builders.

F. Declarant desires to form the Association as a non-profit corporation for the purpose of benefiting the Community, the Owners and the Declarant, which Association will construct, operate, manage and maintain a variety of Common Properties within the Community; establish, levy, collect and disburse Assessments and other charges imposed hereunder; and as agent and representative of the Members and Residents of the Association, administer and enforce all provisions hereof. Declarant has prepared the necessary documents for the incorporation and organization of the Association.

G. The purposes of this Declaration are to (a) protect the Declarant and the Owners, as hereinafter defined, against the improper development and use of Lots, as hereinafter defined, within the Community; (b) create an aesthetically pleasing environment; (c) provide for certain landscaping and the maintenance thereof, and of the Common Properties, as hereinafter defined; and (d) in general to encourage construction of attractive, high quality, permanent improvements. In view of the Declarant's long-range plans, the Declarant desires to retain reasonable flexibility to respond to changing or unforeseen circumstances so as to guide, control and maintain the quality and distinction of the Community. The restrictive covenants herein below are designed to also comply with the requirements of the Zoning Ordinance, to better ensure the care and maintenance of the properties located within the Community, including the Common Properties.

H. Declarant desires to establish for its own benefit and for the mutual benefit of all Owners, Residents or other holders of an interest in the Community, or any part thereof, certain easements and rights and certain mutually-beneficial covenants, restrictions and obligations with respect to the proper development, use and maintenance of the various parcels and neighborhoods within the Community. Declarant desires and intends that the Owners, Residents and other holders of an interest in the Community or other persons hereafter acquiring any interest or otherwise utilizing property at or in the Community, shall at all times enjoy the benefits of, and shall hold their interest subject to the rights, easements, privileges, covenants and restrictions hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the aesthetic and cooperative aspects of the Community and enhance the value, desirability and attractiveness thereof.

I. In order to cause the Covenants to run with the Community and to be binding upon the Community and the Owners and Residents thereof from and after the date this Declaration is Recorded, Declarant hereby makes all conveyances, whether or not so provided therein, subject to the Covenants herein set forth; and by accepting deeds, leases, easements or other grants or conveyances to any portion of the Community, the Owners and other transferees for themselves and their heirs, executors, administrators, trustees, personal representatives, successors and assigns, agree that they shall be personally bound by all of the Covenants (including but not limited to the obligation to pay Assessments) hereinafter set forth, except to the extent such persons are specifically excepted therefrom.

The Declarant hereby sets forth the Declaration, as follows:

DECLARATION

The Declarant hereby declares that the Community, as now or hereafter made pursuant to Article II hereof, are and shall be owned, held, mortgaged, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth.

ARTICLE I

CONCEPTS AND DEFINITIONS

The following words, when used in this Declaration or in any amended or supplementary Declaration (unless the context shall otherwise clearly indicate or prohibit), shall have the following respective concepts and meanings:

“Amended Declaration” shall mean and refer to each and every instrument recorded in the Records, which amends, supplements, modifies, clarifies or restates some or all of the terms and provisions of this Declaration.

“Annual Assessments” shall have the meaning specified in Article V.

“Articles” shall mean shall mean and refer to the Articles of Incorporation of the Association, as the same may be from time to time duly amended or modified.

“Architectural Control Committee” or “ACC” shall mean and refer to one or more of the Architectural Control Committees, which may be from time to time appointed or selected pursuant to Article X hereof.

“Assessable Property” shall mean any Lot or Parcel except such part or parts thereof as may from time to time constitute Exempt Property.

“Assessment” or “Assessments” shall mean and refer individually or collectively to the Annual Assessments, the Special Group Assessments and the Individual Assessments.

“Assessment Lien” shall mean and refer to the Assessment Lien described within Article V.

“Assessment Period” shall mean the term set forth in Article V.

“Association” shall mean and refer to the Utah non-profit corporation being formed by Declarant to have the power, duty and responsibility of maintaining and administering certain portions of the Community and all of the Common Properties, administering and enforcing the Covenants and otherwise maintaining and enhancing the quality of life within the Community.

“Board” shall mean and refer to the Board of Trustees of the Association.

“Bona-Fide Lessee” shall mean and refer to a temporary occupant of a Dwelling Unit pursuant to a legally cognizable lease agreement with an Owner in accordance with the requirements of Section 11.37 of this Declaration.

“Bylaws” shall mean and refer to the Bylaws of the Association, as adopted and amended from time to time in accordance with the provisions of this Declaration and the Utah Non-Profit Corporation Act or other applicable laws promulgated by the State of Utah.

“Charges” shall mean and refer to charges imposed against an Owner delinquent in the payment of his/her/its Assessments, including, but not limited to the fines, charges and fees contemplated by Article V hereof.

“Class A Member” shall mean each Owner of a Lot.

“Class B Member” shall mean the Declarant.

“Class B Conversion Date” shall mean and refer to the date that the Class B Memberships shall cease and shall converted to Class A Memberships as provided in Section 3.3.2.

“City” shall mean and refer to the City of Provo, Utah.

“Common Properties” shall mean and refer to any and all areas of Association land within the Community which are known, described or designated by the Declarant or the Board as green areas, common areas, the Streets (and Alleys), any controlled access areas and monitoring devices, flood gates, street lighting and signs (and all elements thereof), parks, creek easement areas, entryways, monuments, gates and gate houses, recreational easements, ponds, dams, perimeter fences and columns, off-site monuments and directional signs, landscape easements, swimming pool(s), tennis court(s), open spaces, areas on a Lot or a Parcel within easements granted to the Association or its Members for the location, construction, maintenance, repair and replacement of landscaping (which easement may be granted or created on a Plat or Neighborhood Declaration or Supplemental Declaration or Deed or other conveyance accepted by the Association), paths and trails, and the like, including, without limitation, those shown on any Plat, as well as those not shown on a Plat but which are intended for or devoted to the common use and enjoyment of the Members of the Association, together with any and all improvements that are now or that may hereafter be constructed thereon. The “Common Properties” shall also include any and all public right-of-way lands for which the City has required that the Declarant and/or the Association expend private, non-reimbursable time and monies to care for and maintain as reflected on the site map attached hereto as Exhibit “B” and made a part hereof.

“Community” shall mean and refer to the tracts or parcels of real property more particularly described on Exhibit “A” attached hereto and made a part hereof for all purposes, together with all easements in or upon or benefiting the Community and all other rights and appurtenances belonging or in anywise pertaining thereto.

“Community Expense Fund” shall mean and refer to the fund created or to be created pursuant to the provisions of Article V of this Declaration and to which all monies of the Association shall be deposited. Two separate and distinct funds shall be created and maintained thereunder, one for operating expenses and one for capital or reserve expenses which together shall constitute the Community Expense Fund.

“Community Expenses” shall mean and refer to those costs and expenses arising out of or connected with the maintenance and operation of the Community and the Association as described in Article V hereof and which determine the Assessments made to Owners.

“Condominium Development” shall mean a condominium ownership regime established under the laws of the State of Utah, including a Residential Condominium Development.

“Condominium Unit” shall mean a condominium unit (as defined under Utah Code Ann. §57-8-1 et seq.) including its appurtenant interest in all Common Areas, established under Utah law.

“Covenants” shall mean and refer to all covenants, conditions, restrictions, and easements, charges and liens set forth within this Declaration or any amendment thereto.

“Declarant” shall mean and refer to Stone Gate, L.C., a Utah limited liability company and any or all successor(s) and assign(s) of Stone Gate, L.C., with respect to the voluntary disposition of all (or substantially all) of the right, title and interest of Stone Gate, L.C., in and to the Community.

“Declaration” shall mean and refer to this particular instrument entitled “DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS CHARGES AND LIENS ON AND FOR STONE GATE, A PLANNED COMMUNITY, together with any and all amendments or supplements hereto.

“Deed” shall mean and refer to any deed, assignment, testamentary bequest, monument of title or other instrument, or intestate inheritance and succession, conveying or transferring fee simple title or a leasehold interest or another legally recognized estate in a Lot.

“Design Guidelines” shall mean and refer to those particular standards, restrictions, guidelines, recommendations and specifications, described herein or from time to time promulgated by the ACC, applicable to most of the aspects of construction, placement, location, alteration, maintenance and design of any improvements to any Lot, and all amendments, bulletins, modifications, supplements and interpretations thereof.

“Development Period” shall mean a period commencing on the date of the recording of this Declaration in the Records and continuing thereafter until and ending on the earlier of (a) the date of the sale by the Declarant of the last Lot or Parcel owned by Declarant, or (b) the date the Declarant voluntarily terminates its Class B Member status by recording a written notice of such termination in the Records.

“Development Tract” shall mean and refer to those portions of the Community, which (a) are or will be (i) platted into Lots, (ii) assessed by a Taxing Authority, and (iii) developed in accordance with the uses permitted by the Zoning Ordinance and this Declaration, and (b) are not intended to constitute any portion of the Common Properties.

“Director” or “Trustee” shall mean and refer to any duly elected member of the Board of Trustees as defined in Article VI.

“Dwelling Unit” shall mean and refer to any building or portion of a building situated upon any Lot or Parcel, which is designed and intended for Single Family Residential Use.

“Easement Areas” shall mean and refer to those areas, which may be covered by an easement specified in Article IV below.

“East Side Parcel” shall mean and refer to that part of the Community as reflected on the site map attached hereto as Exhibit “B” and made a part hereof.

“Eligible Insurers” is defined in Article XIII below.

“Eligible Mortgagees” shall mean and refer to a Mortgagee that has requested notice of certain matters from the Association in accordance with Section 13.1 of this Declaration.

“Exempt Property” shall mean the following parts of the Community:

- (a) all land and Improvements owned by or dedicated to and accepted by the United States, a municipal authority, or any political subdivision thereof, for as long as any such entity or political subdivision is the owner thereof;
- (b) all Common Properties and Association land, for as long as the Association is the owner thereof;
- (c) each other property, including each Lot or Parcel, while owned by Declarant, or a Declarant-related developer entity, until the earliest to occur of (i) the acquisition of record title by any other Person other than Declarant or a Declarant-related developer entity, or (ii) the 60th day after the municipal authority having jurisdiction thereover issues a Certificate of Occupancy for the first Dwelling Unit constructed thereon. Declarant or a Declarant-related developer entity may expressly waive its right to an exemption from Assessments as to some or all of Exempt Properties of which it is the Owner. In such event, such exemption shall terminate as to each such identified Exempt Property. Any such waiver shall run with the title to each such Exempt Property and bind its subsequent Owners.
- (d) All Exempt Property described herein shall be exempt from Assessments; provided, however, the Declarant or a Declarant-related entity shall remain a Member in the Association in all times as a Class B Member with voting rights, notwithstanding its temporary exemption status from Assessment payments. At the sole and exclusive option of Declarant, property described in (a) above shall be fully exempt from all of the terms and provisions of this Declaration.

“First Mortgage” means any mortgage, deed of trust or other document pledging any portion of a Lot or Parcel or interest therein as security for the payment of a debt or obligation and which is not subject or subordinate to any lien or encumbrance except for liens for taxes or other liens which are given priority by statute.

“First Mortgagee” means any Person named as a Mortgagee under a First Mortgage, or any successor to the interest of any such person under a First Mortgage.

“Fiscal Year” shall mean each twelve (12) month period commencing on January 1 and ending on the following December 31, unless the Board shall otherwise select an alternative twelve month period.

“General Public Uses” shall mean those types of uses designated as General Public Uses in this Declaration, as it may be amended, including but not limited to any streets, parks or other areas conveyed, signed, or transferred by Deed or other written instrument to a municipal authority which has, or may in the future have, jurisdiction over some part of the Community.

"Governing Documents" shall mean this Declaration and such recorded amendments, Neighborhood Declarations, Supplemental Declarations, the Bylaws, the Articles, the Community Rules, the Design Guidelines and the Board's resolutions.

"Improvement" shall mean any physical change to raw land or to an existing Structure which alters the physical appearance, characteristics or properties of the land or Structure, including but not limited to the new construction of a Structure or Structures and related amenities, adding or removing square footage area or space to or from a Structure, painting or repainting a Structure, or in any way altering the size, shape or physical appearance of any Structure or any building or other improvement, temporary or permanent, located on any Lot.

"Individual Assessments" shall mean and refer to the assessments that may be from time to time imposed upon an individual Owner in accordance with the provisions of Section 5.1 hereof.

"Land Use Classification" shall mean the classification to be established by the Declarant pursuant to Article II which designates the type of Improvements which may be constructed on a Lot or Parcel and the purposes for which such Improvements and surrounding land may be utilized.

"Lot" shall mean and refer to each separately identifiable portion of the Community which is (a) platted into individual Lots and becomes a part of the Community pursuant to a Plat filed and recorded in the Records, (b) assessed by any one or more of the Taxing Authorities, (c) is to be used solely for a Residential Use, and (d) is not intended to constitute any portion of the Common Properties.

"Maintenance Charges" shall mean any and all costs assessed pursuant to Article VIII.

"Manager" shall mean and refer to any Person who has been designated or engaged by the Board to manage the affairs of the Association, to the extent the Board elects to make such designation.

"Member" shall mean and refer to any Person holding a Membership in the Association pursuant to this Declaration. A "Membership" shall mean a Membership in the Association and the rights granted to the Owners and Declarant pursuant to Article III to participate in the Association.

"Merchant Builder" shall mean a Person who acquires a Parcel or group of two or more Lots in the Community for the purpose of improving and constructing Dwelling Units or other Improvements thereon for resale to the general public or other development purposes; provided, however, that the term "Merchant Builder" shall not mean or refer to Declarant or its successors.

"Mortgage" shall mean any mortgage, deed of trust, or other document pledging any portion of a Lot or Parcel or interest therein as security for the payment of a debt or obligation.

"Mortgagee" shall mean a beneficiary of a Mortgage as well as a named Mortgagee.

“Neighborhood” shall mean two or more Lots or a Parcel which will contain Lots which share interests other than those common to all Lots or Parcels, as more particularly described in Article II. By way of illustration and not limitation, a Single Family Residential Development or a Residential Condominium Development might each be designated as separate Neighborhoods. Each Parcel intended for development shall constitute a Neighborhood, subject to division by Declarant into more than one Lot upon development.

“Neighborhood Declaration” shall mean a declaration recorded pursuant to Article II of this Declaration. A Neighborhood Declaration shall contain restrictions on use and may establish a Land Use Classification for the Parcel covered by the Neighborhood Declaration as described in Article II of this Declaration. It is contemplated that a Neighborhood Declaration will be, in contrast to a Supplemental Declaration, a more comprehensive and detailed document such as a condominium declaration or restrictive covenants which more specifically regulate a Neighborhood.

“Owner” shall mean and refer to the holder(s) of record title to the fee simple interest of any Lot or Parcel whether or not such holder(s) actually reside(s) on any part of the Lot or Parcel.

“Parcel” shall mean an area of real property within the Community limited by a Neighborhood Declaration or Supplemental Declaration to the Land Use Classification of a Residential Condominium Development (but only until the condominium regime therefore is recorded). The term Parcel shall also include those areas of land within the Community intended for Single Family Residential Use or Cluster Residential Use, but may not have yet been subdivided into Lots and related amenities and rights of way; any such area shall cease to be a Parcel upon the recordation of a Plat or other instrument covering the area and creating Lots and related amenities. A Parcel shall not include a Lot or any property of the Association, but shall include areas not yet included in a Plat or condominium property regime. Declarant shall have the right to unilaterally identify and create and/or reconfigure the boundaries of any Parcel of which Declarant is the Owner.

“Person” shall mean an individual, partnership, joint venture, corporation, limited liability company, trust (including a business trust), unincorporated association or other entity, or a government or any political subdivision or agency thereof.

“Plat” or “Plats” shall mean and refer to the subdivision plat or plats of the Community, which have been approved by the City and filed and Recorded in the Records.

“Records”, “Recording” shall mean placing an instrument of public record in the office of the County Recorder of Utah County, Utah, including the Map and Plat Records of Utah County, Utah, and “Recorded” shall mean having been so placed of public record.

“Resident” shall mean and refer to:

- (a) each Owner of any Lot or Parcel; and
- (b) each Person actually residing within any part of the Community who is a Bona-Fide Lessee pursuant to a legally cognizable lease agreement with an Owner in accordance with the requirements of this Declaration; and

(c) each individual lawfully domiciled in a Dwelling Unit in accordance with the requirements of this Declaration other than an Owner or Bona-Fide Lessee including, without limitation, members of a Single Family of each Owner and Bona-Fide Lessee.

“Residential Condominium Development and/or Residential Condominium Development Use” shall mean a Condominium Development intended for Single Family Residential Use.

“Residential Use” shall mean and refer to any use and/or occupancy of any Dwelling Unit as a residence by a Single Family.

“Single Family” shall mean, unless otherwise expressly provided herein, any one of the following:

- (a) one person living alone; or
- (b) the head of household and all persons related to the head of household by marriage or adoption as a parent, child, grandparent, grandchild, brother, sister, uncle, aunt, nephew, niece, great-grandparent, or great-grandchild; or
- (c) two or three related or unrelated persons living and cooking together as a single housekeeping unit.

One (1) or two (2) additional related or unrelated persons may be included within the definition of a Single Family for purposes of option (b) above if two or more of the persons within option (b) share the legal relationship of parent and child or grandparent and child and if all of the persons within that option, including the unrelated persons, live and cook together as a single housekeeping unit. For purposes of this exception, the parent or grandparent must actually reside in the subject Dwelling Unit.

“Single Family Residential Development and/or Single Family Residential Use” shall mean Lots intended for Single Family occupancy in Dwelling Units, together with related areas intended for the use and enjoyment of the Owners and Residents of such Lots.

“South Side Lots” shall mean and refer to those parts of the Community as reflected on the site map attached hereto as Exhibit “B” and made a part hereof.

“Special Group Assessment” shall mean and refer to assessments imposed upon the Owners for capital improvements or unusual or emergency matters, in accordance with the provisions of Section 5.4 hereof.

“Streets (and Alleys)” shall mean the right-of-way of all private streets, alleys, sidewalks and other rights-of-way situated within, and shown on the Plats, together with all pavement, curbs, street lights, signs and related facilities thereon.

“Structure” shall mean and refer to: (a) any thing or device, other than trees, shrubbery (less than two (2) feet high if in the form of a hedge in respect to a Residential Lot) and landscaping, including but not limited to, any building, improvement, parking facility or area,

garage, porch, shed, greenhouse, cabana, covered or uncovered patio, pool, play apparatus, clothesline, fence, curbing, paving, wall or hedge, signboard or other temporary or permanent living quarters or any temporary or permanent improvement to any Lot; (b) any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across any Lot; (c) any enclosure or receptacle for the concealment, collection and/or disposition of refuse; and (d) any change in the grade of any Lot which involves a change of more than three (3) inches from the existing grade initially approved by the ACC.

“Supplemental Declaration” shall mean an amendment or supplement to this Declaration which imposes, expressly or by reference, additional restrictions and obligations on the land described therein. The term shall also refer to an instrument filed by the Declarant identified as a Supplemental Declaration and recorded pursuant to Article II of this Declaration which establishes a Land Use Classification. Neighborhood Declarations may or may not be Recorded in addition to or as part of a Supplemental Declaration in Declarant’s sole, exclusive and subjective discretion, however, it is possible, but not required, that certain Lots or Parcels may be subject to both a Neighborhood Declaration and a Supplemental Declaration. It is contemplated that a Supplemental Declaration will be, in contrast to a Neighborhood Declaration, a relatively short document adding property to the Community, and identifying the Land Use Classification.

“Taxing Authorities” shall mean and refer to Utah County, Provo City and the State of Utah and any and all other governmental entities or agencies which have, or may in the future have, the power and authority to impose and collect ad valorem taxes on real property estates, in accordance with the Utah Constitution and applicable statutes and codes.

“Yards” shall mean and refer to the entire yard area of a lot from the street to the Dwelling Unit and extending to include both sides and the rear yard area from the exterior surface of the Dwelling Unit to the side and rear boundaries of the yard, excluding only the exterior surface and interior area of the Dwelling Unit located thereon.

“Yard Maintenance” shall mean and refer to normal and routine maintenance of Yards, as determined from time to time by the Board, including but not limited to (a) mowing and edging Yards, (b) trimming Yards with lawn maintenance equipment, (c) fertilizing, trimming shrubbery, turning flower beds and applying insect control chemicals to Yards, (d) trimming of trees, planting of shrubbery, grass, trees or other landscaping, maintaining irrigation or watering systems, or any other maintenance or service determined by the Board to be within the maintenance of Yards. The term “Yard Maintenance” shall not in any event include planting of shrubbery, grass, trees or other landscaping, installing or maintaining irrigation or sprinkling systems, or any other maintenance or service determined by the Board not to be within normal and routine maintenance of Yards.

“Zoning Ordinance” shall mean and refer to the provisions relating to Performance Development Overlay Zone (PD).

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION AND LAND USE CLASSIFICATIONS

2.1. Right to Expand and State of Title to New Lots and Parcels. There is hereby granted unto Declarant, and Declarant hereby reserves, the absolute right and option at any time and from time to time prior to the Class B Conversion Date to (i) expand the Community at any time within the limits herein prescribed and from time to time by adding to the Community additional land, and (ii) combine and/or reconfigure Lot(s) or create Lots on Parcels which had not previously been subdivided permitting the development by Declarant of additional, larger or smaller Lots upon any portion of the Community, subject to the requirements of the Zoning Ordinance and the Recorded Plat, and (iii) to amend, modify or substitute a new Plat and to file and record the same in the Records. Notwithstanding any provision of this Declaration which might be construed to the contrary, such right and option may be exercised without obtaining the vote or consent of any other person (including any Owner, Eligible Mortgagee or other Person) and shall not be limited. Any additional land shall be deemed added to the Community and/or there shall be deemed a reconfiguration or creation of the Lot(s) at such time as a duly approved Plat and, as required, a Supplemental Declaration containing the information required by Section 2.2 below have been Recorded with respect to the additional land and/or reconfigured or created Lot(s) concerned. After the date such Plat and, as required, a Supplemental Declaration is Recorded, title to each Lot and Parcel thereby created or reconfigured shall be vested in and held by, at Declarant's sole option, either the Declarant, the Association or any transferee of Declarant.

2.2. Procedure for Expansion or Reconfiguration. Each Plat and, as required, Supplemental Declaration by which an addition to the Community of any additional land or reconfiguration or creation of Lot(s) is accomplished shall be executed by Declarant, shall be in recordable form, must be Recorded in the office of the County Recorder of Utah County, Utah, on or before the date which is prior to the Class B Conversion Date, and shall contain the following information for the additional land or Lots which are being added or reconfigured:

2.2.1 Data sufficient to identify this Declaration with respect to the additional land being added or Lot(s) created or reconfigured.

2.2.2 The legal description of the additional land being added or reconfigured.

2.2.3 A statement that such additional land or reconfiguration or creation of Lot(s) shall thereafter be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, easements, charges, and liens set forth in this Declaration.

2.2.4 Such other matters as may be necessary, desirable, or appropriate and as are not inconsistent with any limitation imposed by this Declaration.

Upon the date any Plat or supplement contemplated above is Recorded, it shall automatically supplement this Declaration and any supplements previously Recorded. At any point in time, this Declaration for the Community shall consist of this Declaration, as amended and expanded by all supplements theretofore recorded pursuant to the terms hereof.

2.2.5 Any additions, expansions or reconfigurations to the Community made pursuant to this Article II, when made, shall automatically extend the jurisdiction, functions, duties and Membership of the Association to the properties added or reconfigured and correspondingly subject the properties added or reconfigured to the covenants of the enabling Declaration.

2.3 No Obligation to Expand. Except to the extent specifically indicated herein, this Declaration is not intended, and shall not be construed so as to impose upon Declarant any obligation respecting, or to restrict Declarant in any way with regard to: (i) The addition to the Community of any additional land; (ii) The creation or construction of any Lot or other Improvement; or (iii) The carrying out in any particular way or within any particular time of any development or addition which may be undertaken.

2.4 Withdrawal of Property. At any time before the date which is the earlier of (i) the date a Supplemental Declaration and/or amended or new plat is Recorded which subdivides or creates Lots within the East Side Parcel, or (ii) ten (10) years from the date that this Declaration is Recorded, the Declarant shall have the right to withdraw all or any portion of the East Side Parcel from the Community without the consent of any other Owner, Mortgagee or Person (other than the Owner of the East Side Parcel, if other than the Declarant. The withdrawal of all or any portion of the East Side Parcel shall be affected by the Declarant Recording a written instrument setting forth the legal description of the property being withdrawn. Upon the withdrawal of any property from the Community pursuant to this Section, such property shall no longer be subject to any of the covenants, conditions and restrictions set forth in this Declaration.

2.5 Land Use Classifications. As portions of the Community are readied for development and sale, the Land Use Classifications, restrictions, easements, rights-of-way and other matters, may be fixed or modified by Declarant in a Neighborhood Declaration and/or Supplemental Declaration which shall be recorded for that portion of the Community. Any such Neighborhood Declaration or Supplemental Declaration shall be construed as a supplement to this Declaration and fully a part hereof for all purposes to the same extent as if all of the provisions thereof were set forth in this Declaration. In exercising its authority to record Neighborhood Declarations and/or Supplemental Declarations, Declarant may impose new Land Use Classifications or new restrictions so long as such are generally in conformance with then existing uses and restrictions applicable to the Community and with this Declaration. Notwithstanding the foregoing, at anytime prior to the Class B Conversion Date, the Declarant may change the Land Use Classifications for Lots, Parcels and Common Properties. The contemplated Land Use Classifications are as follows:

2.5.1 Single Family Residential Use

2.5.2 Residential Condominium Development Use, which may be converted to condominium use upon approval by the Declarant or the Board; and

2.5.3 General Public Uses approved by the Declarant or the Board.

Unless otherwise specifically provided in this Declaration, the definitions and characteristics of such Land Use Classifications, and specific permitted and prohibited uses in such Land Use Classifications, shall be as provided herein or as determined in applicable Neighborhood Declarations or Supplemental Declarations and shall be in the complete and sole discretion of the Declarant. The initial Land Use Classification of all portions of the Community other than General Public Uses, Common Properties and the Manor Homes (North Lots) shall be Single Family Residential Use. The Manor Homes (North Lots), at the sole discretion of the Declarant, shall be either Residential Condominium Development Use or Single Family Residential Use.

ARTICLE III

MEMBERSHIP; VOTING
RIGHTS IN THE ASSOCIATION

3.1 Owners of Lots and Parcels. Every Person who is the Owner of a Lot or Parcel that is subject to Assessment shall be a Member of the Association (provided, however, the Declarant shall remain a Member in the Association at all times as a Class B Member with voting rights, notwithstanding its temporary exemption status from required Assessment payments). Each such Owner shall have the following number of Memberships:

3.1.1 One Membership for each Lot owned by the Member;

3.1.2 In the case of the Owner of a Parcel designated for Residential Condominium Development but as to which a condominium regime has not been recorded, one Membership for each Dwelling Unit permitted upon the Parcel under the Plat then in effect for the Community. In the case of the Owner of a Parcel designated for Single Family Residential Development, one Membership for each Dwelling Unit permitted upon the Parcel under the Plat then in effect for the Community.

3.1.3 No Memberships shall be allocated to Common Properties, Exempt Property (except as otherwise provided regarding Declarant), or property utilized for other General Public Uses.

3.1.4 Each such Membership shall be appurtenant to and may not be separated from ownership of the Lot or Parcel to which the Membership is attributable.

3.2. Declarant. The Declarant shall be a Member of the Association for so long as the Declarant holds a Class B Membership pursuant to Section 3.3 below or for so long as Declarant owns any Assessable Property in the Community.

3.3. Voting. The Association shall have two classes of voting Memberships:

3.3.1 Class A Memberships shall be all Memberships except the Class B Memberships held by the Declarant and the Merchant Builders. Each Owner shall be entitled to one (1) vote for each Class A Membership held by the Owner, subject to the authority of the Board to suspend the voting rights of the Owner for violations of this Declaration. Notwithstanding the foregoing, no vote shall be cast or counted for any Class A Membership not subject to Assessment.

3.3.2 The Class B Memberships shall be held only by the Declarant and any successor of Declarant who takes title for the purpose of development and sale and who is designated as such in a Recorded instrument executed by Declarant, and those Merchant Builders described below in this Section 3.3. Notwithstanding anything in this Declaration to the contrary, the Declarant shall initially be entitled to 117 votes; this number shall be decreased by one (1) vote for each Class A Membership existing at any one time. The Class B Memberships shall cease and shall be converted to Class A Memberships, on the basis of the number of Lots and Parcels owned by the Declarant and Merchant Builders, on the happening of the first of the following events (the "Class B Conversion Date"):

3.3.2.1 When the total votes outstanding in the Class A Memberships equal or exceed 59, which number shall be increased to equal 75% of the total votes allocated by Declarant to any additional Lots added with any amended Plat; or

3.3.2.2 Twenty-five (25) yeas from the date this Declaration is Recorded; or

3.3.2.3 When, in its discretion, the Declarant so determines.

3.3.3 From and after the happening of such events, whichever occurs first, the Class B Member shall be deemed to be a Class A Member entitled to one (1) vote for each Lot and one (1) vote for each membership appurtenant to the Parcels which it owns as set forth in Section 3.1 hereof. At such time, the Declarant shall advise the Membership of the termination of Class B status.

3.3.4 The sale of an unimproved Parcel or Lot by the Declarant to a Merchant Builder, who is in the business of building Dwelling Units for sale to individual home purchasers shall not convert the Class B Memberships attributable to that parcel or those Lots to Class A Memberships; provided, however, that any other sale of Lot(s) or Parcel(s) shall convert the Membership(s) attributable to that Lot(s) or Parcel(s) to Class A Membership(s).

3.3.5 Until such time as the Class B Memberships are converted to Class A Memberships, each Class B Member other than Declarant shall be conclusively presumed, by accepting the conveyance of a Lot's or Parcel's legal title from Declarant or another Class B Member, to have (i) given Declarant an irrevocable and exclusive proxy to cast such Class B Member's Votes on each such question coming before the Membership while such Class B Member holds such title; and (ii) agreed with Declarant that such proxy is given to and relied on by Declarant in connection with Declarant's sale or conveyance of such Lots or Parcel to such Class B Member, and in connection with Declarant's development, construction, marketing and sale of the Community, and is coupled with an interest.

3.3.6 The Declarant, as holder of the right to vote the Class B Memberships, may appoint the Trustees until the Class B conversion Date as provided in this Declaration.

3.3.7 Except as otherwise expressly provided in this Declaration or in any of the other Governing Documents, any issue put to a vote by ballot without a meeting or at a duly called and held meeting of Association members shall be decided by a simple majority of all votes represented in person or by valid proxy at such meeting, regardless whether such votes are otherwise deemed to be Class A votes or Class B votes.

3.4. Exercise of Voting Rights. In any situation in which a Member is entitled personally to exercise the vote for his or her Lot and there is more than one Owner of a particular Lot, the vote for such Lot shall be exercised as such co-Owners determine among themselves and advise the Secretary or the Board of the Association in writing prior to any meeting. Absent such advice, the Lot's vote shall be suspended if more than one Person seeks to exercise it.

3.5. Membership Rights. Each Member shall have the rights, duties and obligations set forth in this Declaration and such other rights, duties and obligations as are set forth in the Governing Documents, as the same may be amended from time to time.

3.6. Transfer of Membership. The rights and obligations of the Owner of a Class A Membership in the Association shall not be assigned, transferred, pledged, designated, conveyed or alienated in any way except upon transfer of ownership to an Owner's Lot or Parcel and then only to the transferee of ownership to the Lot or Parcel. A transfer of ownership to a Lot or Parcel may be effected by deed, intestate succession, testamentary disposition, foreclosure or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of Utah. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Lot or Parcel shall operate to transfer the Membership(s) appurtenant to said Lot or Parcel to the new Owner thereof.

3.7. Board Rules. The Board may make such rules and regulations, consistent with the terms of this Declaration and the Bylaws, as it deems advisable, for: (i) any meeting of Members; (ii) proof of membership in the Association; (iii) the status of good standing; (iv) evidence of right to vote; (v) the appointment and duties of examiners and inspectors of votes; (vi) the procedures for actual voting in person or by proxy; (vii) registration of Members for voting purposes; and (viii) such other matters concerning the conduct of meetings and voting as the Board shall deem fit.

3.8. Notice: Voting Procedures; Meetings. Quorum, notice and voting requirements of and pertaining to the Association may be set forth within the Articles and Bylaws, as either or both may be amended from time to time, and shall be in accordance with permitted Utah law. The Members shall meet at least annually to deal with and vote on matters relating to the business of the Association, as directed by the Board, including the election of the Trustees.

3.9. Matters Generally Subject of the Vote of Member. Additionally, to the extent that the Board desires to encumber any portion of the Common Properties as security for payment of indebtedness incurred in respect to improvements to the Common Properties, the Board shall obtain the prior approval of the Members in the same manner as approval of a Special Group Assessment as provided in Section 5.4 hereof.

ARTICLE IV

RIGHTS OF ENJOYMENT IN THE COMMON PROPERTIES; COMMUNITY EASEMENTS

4.1. Common Properties Easements.

(a) Subject to the provisions of this Article IV below, each and every Owner of a Lot in good standing with the Association shall have a non-exclusive right and easement of enjoyment in and to the Common Properties, and such easement, subject to the provisions of this Declaration, shall be appurtenant to and shall pass with every Lot, provided the conveyance and transfer is accomplished in accordance with this Declaration.

(b) All Residents in good standing with the Association shall have a non-transferable, non-exclusive privilege to use and enjoy all Common Properties for so long as they and the Owner of the Lot in which they Reside are in good standing with the Association.

(c) The Declarant reserves the right to use, during the Development Period, portions of the Common Properties (e.g. a sales information center) for business matters directly and indirectly related to the Community.

(d) One or more portions of the Common Properties may from time to time be reasonably limited to private functions for use of Members and their guests and invitees, and conversely, one or more portions of otherwise private property (subject to the consent of the Owner thereof) may be utilized for Association functions and activities.

(e) The Declarant shall convey record title to some or all of the Common Properties to the Association if, as and when deemed appropriate by the Declarant or as may be required by governmental officials, and the Declarant shall at all times have and retain the right to effect redesigns or reconfiguration of the Common Properties and to execute any open space declarations applicable to the Common Properties which may be permitted. The Declarant expressly reserves the right to excavate and move dirt from or to the balance of the Common Properties, in such amounts as may be necessary pursuant to the 100-year floodplain as determined by the Federal Emergency Management Agency (FEMA) or any other state or federal agency or authority providing or establishing floodplain data. To the extent any dirt is so excavated and removed, the Declarant shall create or cause the balance of the Common Properties to be graded and reshaped into a usable condition.

(f) The Declarant shall have the right to reconfigure the Common Properties and the boundary line thereof and release a portion (the "Release Portion") of the Common Properties in its entirety from the designation as Common Properties, permitting the development by Declarant of additional Lots upon the Released Portion, or other uses permitted by the Zoning Ordinance and the Recorded Plat.

(g) The Common Properties shall be used exclusively by the Residents in good standing with the Association, and their guests and invitees, and access thereto shall be prohibited to any other Person. Access to the Common Properties may be restricted by gating and fencing. The Owners of the Lots shall be responsible for all Assessments associated with the costs of the maintenance (including landscaping where applicable) of (i) the Streets (and Alleys) situated within the Community, (ii) manned and unmanned gated areas serving the Community accessible by the Owners of Lots and (iii) the balance of the Common Properties, including amenities constructed or installed in the Common Properties accessible by Residents, such as pools, trails, tennis courts, fountains and other amenities located within the Common Properties.

(h) The Declarant shall have the right to amend this Declaration for the specific purposes of granting or creating easements between the Association and certain of the Lot Owners to grant the Association an easement within an area from the river bank to a specified distance permitting the Association restricted access to the area covered thereby for the purpose of landscape maintenance and removal of trees and debris.

4.2. Extent of Common Properties Easement. The rights and easements of use, recreation and enjoyment created hereby shall be subject to the following:

(a) The right of the Declarant or the Board to prescribe reasonable rules, regulations and policies governing, and to charge fees and/or deposits (e.g., key and access card deposits) related to, the use, operation and maintenance of the Common Properties;

(b) The Board shall have the power and authority to prescribe rules and regulations which extend to and cover matters such as (but not limited to) smoking, the possession and consumption

of alcoholic beverages, loud and obnoxious noises and behavior, pets, dress and attire and the supervision by attending adults of children. No Person (excluding the Declarant) shall use any portion of the Common Properties to:

- (i) solicit, promote or conduct business, religious, political or propaganda matters;
- (ii) distribute handbills, newsletters, flyers, circulars or other printed materials, without the prior written consent of the Board (which consent may be withheld in its sole and absolute discretion).
- (c) Liens or mortgages placed against all or any portion of the Common Properties with respect to monies borrowed by the Association to improve or maintain the Common Properties;
- (d) The right of the Association to enter into and execute contracts with any party (including, without limitation, the Declarant or its affiliates) for the purpose of providing management, maintenance or such other materials or services consistent with the purposes of the Association and/or this Declaration;
- (e) The right of the Declarant or the Association to take such steps as are reasonably necessary to protect the Common Properties against foreclosure;
- (f) The right of the Declarant or the Association to suspend the voting rights of any Member and to suspend the right of any Member or Resident to use or enjoy any of the Common Properties for any period during which any Assessment (including without limitation "fines") against a Lot remains unpaid, or during which non-compliance with this Declaration, the Design Guidelines applicable to the Lot in question exists, and otherwise for any period deemed reasonable by the Association for an infraction of the then-existing rules and regulations;
- (g) The right of the Declarant and/or the Association to dedicate or transfer all or any part of the Common Properties to any municipal corporation, public agency, governmental authority, or utility for such purposes and upon such conditions as may be agreed to by the Declarant or the Board, including the right of the Declarant or the Association to enter into and execute contracts with the owner-operators of any utility system or other similar operations for the purpose of extending utility service on, over or under the Common Properties to ultimately provide service to one or more of the Lots or to adjacent properties which are not owned by the Declarant;
- (h) The right of the Declarant and/or the Association to grant permits, licenses and easements over the Common Properties for utilities and other purposes necessary for the proper development of the Community or for any other reason deemed prudent by the Board;
- (i) The right of the Declarant and/or the Association to regulate use of the Common Properties through Community rules and to prohibit access to those Common Properties such as landscaped areas not intended for use by the Residents. The Community rules shall be intended in the absolute and sole discretion of the Board, to enhance the preservation of the Common Properties or the safety and convenience of the users thereof, or otherwise shall serve to promote the best interests of the Owners;

(j) The right of any applicable municipal corporation, public agency, or governmental authority or quasi-governmental body having jurisdiction over the Community to access and rights of ingress and egress over and across any Street (and Alleys), parking area, walkway, or open area contained within the Community for purposes of providing police and fire protection, transporting school children and providing other governmental or municipal services.

4.3. Restricted Actions. No Member or Resident shall permit anything to be done on or in the Common Properties which would violate any applicable public law or the Zoning Ordinance or which would result in the cancellation of or the increase of premiums for any insurance carried by the Association, or which would be in violation of any law or any rule or regulation promulgated by the Board.

4.4. Damage to the Common Properties. Each Member shall be liable to the Association for any damage to any portion of the Common Properties caused by the negligence or willful misconduct of the Member or his/her family and/or guests and/or invitees and/or employees and/or Bona-fide Lessee.

4.5. Rules of the Board. All Members and Residents shall abide by any rules and regulations adopted by the Board. The Board shall have the power to enforce compliance with the rules and regulations established from time to time by the Board by all appropriate legal and equitable remedies, and a Member or Resident determined to have violated the Board's rules and regulations shall be liable to the Association for all damages and costs incurred by the Association as a result of such violation or in regard to the enforcement thereof, including reasonable attorneys' fees.

4.6. User Fees and Charges. The Board may levy and collect Charges, user fees and other fees for the operation and maintenance of the Common Properties and services which the Board determines to be necessary for the advancement, benefit and welfare of the Owners. In establishing Charges or user fees, the Board may formulate reasonable classifications of users. Such Charges or fees must be uniform within such classifications but need not be uniform throughout the classifications. If a Member shall fail to pay a Charge when due and payable, the unpaid Charge shall be delinquent and upon written notice to the Member shall become a personal debt of the Member in question. Failure of any Member to pay the Charge when due and payable or to comply with Board rules regarding use of the Common Properties, in addition, shall be a breach of these Covenants and shall result in suspension of the Member's rights or privileges with respect to the use of the Common Properties.

4.7. Easement For Encroachments If: (a) construction, reconstruction or repair activities which have been approved by the ACC; or (b) shifting, settlement or other movements of any portion of Improvements which have been approved by the ACC, results either in the Common Properties encroaching on a Lot or Dwelling Unit or Structure, or in a Lot or Dwelling Unit or Structure encroaching on the Common Properties or on another Lot or Dwelling Unit or Structure, and unless otherwise directed by the ACC, a valid easement shall then and there exist to permit the encroachment and reasonable and necessary maintenance or repair activities related thereto. If any part of the Common Properties encroaches or shall encroach upon a Lot or Parcel, an easement for such encroachment and for the maintenance or repair of the same shall and does exist. Each Owner shall have an unrestricted right of ingress or egress to and from its Lot or Parcel.

4.8 Easement for Utilities. There is hereby created an easement at locations approved by Declarant upon, across, over and under the Common Properties for reasonable ingress, egress,

installation, replacement, repair, restoration or maintenance of all utilities, including, but not limited to gas, water, sewer, telephone, cable television and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company to install and maintain the necessary equipment at such locations on the Common Properties, but no sewers, electrical lines, water lines or other utility or service lines may be installed or located on the Common Properties except as initially designed, approved and or constructed by the Declarant or as approved by the Board. Except as may be otherwise permitted by the applicable ACC, no Owner shall erect, construct or permit any obstructions or permanent improvements of any kind or type to exist within any easement area, nor shall anything be done or permitted within an easement area which would restrict or adversely affect drainage. Each Lot Owner assumes full, complete and exclusive liability and responsibility for all cost and expense related to damage, repair, relocation and restoration of any improvements or fences located within an easement area. All utility meters, equipment, air conditioning compressors, pool equipment and similar items must be visually screened and located in areas designated by the ACC. Full rights of ingress and egress shall be had by the Declarant, the Association, and all utility companies serving the Community and their respective successors and assigns, at all times over the Community for the installation, operation, maintenance, repair or removal of any utility or improvement, together with the right to remove any obstruction that may be placed in such easement that would constitute interference with the use of such easement, or with the use, maintenance, operation or installation of such utility. Without limiting the generality of the foregoing, full rights of ingress and egress shall be had by the Declarant in connection with the installation of improvements to the Common Properties and the Community during the Development Period and such periods as shall be required by the Declarant to complete all improvements to the Common Properties and the Community including, without limitation, the improvements shown on the Plat.

4.9 Easement for Ingress and Egress. There are hereby created easements for ingress and egress for pedestrian traffic over, through and across sidewalks, paths, walks and lanes that from time to time may exist upon the Common Properties. There is also created an easement for ingress and egress for pedestrian and vehicular traffic over, through and across such driveways and parking areas as from time to time may be paved and intended for such purposes. Such easements shall run in favor of and be for the benefit of the Owners and Residents of the Lots and Parcels and their guests, families, invitees and Bona-fide Lessees. There is also hereby created an easement upon, across and over the Common Properties and all Streets, Alleys, private roadways, private driveways and private parking areas within the Community for vehicular and pedestrian ingress and egress for police, fire, medical and other emergency vehicles and personnel. The Board and the Declarant shall have the right to relocate and/or reconfigure any and all such easements from time to time as seen fit without the consent of any Owners, Eligible Mortgagee or other Person.

4.10 Sign Easement. The Association shall have the right, privilege, duty and responsibility to reasonably maintain and care for any and all signs, monuments, landscaping and the like installed or placed on the Community.

4.11 Ingress, Egress and Maintenance by the Association. Full rights of ingress and egress shall be had by the Association at all times over and upon the setback and easement areas applicable for each Lot for the carrying out by the Association of its functions, duties and obligations hereunder; provided, however, that any such entry by the Association upon any Lot shall be made with as little inconvenience to the Owner as practical, and any damage caused thereby shall be repaired by the Association at the expense of the Association's maintenance fund.

4.12 Private Streets (and Alleys). The Streets (and Alleys) situated and to be situated within the Community are and shall be private streets and alleys which have not been dedicated to, and are not owned by, the City, unless and until dedicated to the City. The following special provisions shall be applicable to the Streets and Alleys:

(a) All Streets (and Alleys) situated from time to time within the Community and the Common Properties shall be owned by the Association; provided, however, that neither the Declarant nor the Association makes any commitment nor shall either be under any obligation whatsoever to assure that the Streets and Alleys located within the Community and the Common Properties will at all times remain private. Neither the Declarant nor the Association shall have any responsibility therefore. The Declarant and the Association expressly reserve the right at any time or from time to time to dedicate all or any portion of the Streets (and Alleys) located within the Community and the Common Properties to the City. All Streets (and Alleys) located within the Community shall at all times be subject to the lawful exercise by the City of its police powers.

(b) The Association shall, and has the sole responsibility to, maintain the Streets (and Alleys) located within the Community and the Common Properties, and the Association shall make all repairs to the Streets (and Alleys) located within the Community and the Common Properties deemed reasonably necessary by the City from time to time to insure emergency access. The City, so long as the Streets and Alleys remain private and are owned by the Association, shall have no obligation or right to maintain the Streets (and Alleys) or to provide any street cleaning services. All costs and expenses incurred by the Association in maintaining the Streets (and Alleys) shall be paid from funds generated by the Annual Assessment process herein provided for.

(c) Non-exclusive easements are hereby reserved for the benefit of, and granted to, the City, all providers of governmental services of the Community (including without limitation the U.S. Postal Service), to enter onto and use the Streets (and Alleys) for the provision of all governmental and utility services necessary and/or required for the benefit of the Owners in the proper exercise of governmental functions, including without limitation, the right of the City to remove any vehicle or obstacle from the Streets (and Alleys) that impairs emergency access.

(d) The Plats may contain a dedication to the City and to all public utility entities providing utility service to the Community of the right to use the Streets (and Alleys) to construct, install, maintain, operate, inspect, remove and reconstruct the facilities, equipment and systems that serve the Community, by the City and such utility companies shall repair any damage to the pavement or other improvements on the Streets (and Alleys) resulting from any such installation, maintenance, reconstruction or such other work.

4.13 Limited Access System. Declarant may install a mechanical system that limits vehicular access to the Streets (and Alleys) located within the Community from public streets (the "System"). By accepting a Deed to a Lot, each Owner shall be deemed to have acknowledged and agreed to the following:

(a) The Board will have the sole authority, in the Board's sole and exclusive discretion, to determine when the System will be operational.

(b) Neither the Declarant nor the Association shall be responsible for providing security to the Owners or Residents of Lots or their family members, guests, invitees, or Bona-Fide Lessees of their property. The purpose of the System shall be to provide some degree of restriction of

vehicular access onto the Streets (and Alleys) located within the Community. NEITHER THE DECLARANT, THE ASSOCIATION NOR ANY OWNER GUARANTEES OR ASSURES TO ANY OTHER OWNER, RESIDENT NOR ANY OTHER PARTY WHOMSOEVER THAT THE SYSTEM WILL IN ANY MANNER WHATSOEVER PROVIDE PERSONAL PROTECTION OR SECURITY TO ANY OWNER, SUCH OWNER'S PERSONAL POSSESSIONS OR MEMBERS, RESIDENTS, GUESTS OR INVITEES, OR TO ANY OTHER PERSON, AND EACH OWNER, BY THE ACCEPTANCE OF ITS DEED SHALL BE DEEMED TO HAVE ASSUMED THE ENTIRE RISK AS BETWEEN SUCH OWNER AND DECLARANT OR THE ASSOCIATION FOR ANY LOSS OR DAMAGE TO PERSON OR PROPERTY IN THE COMMUNITY ARISING FROM ANY DEFICIENCY, FAILURE OR DEFECT IN THE SYSTEM OR OTHERWISE.

(c) The City shall have access to the Community for law enforcement purposes. Each Owner shall look solely to the City for the provision of law enforcement and police protection.

(d) The System is not intended to replace or to serve in lieu of individual alarm systems or other measures to provide security at a residence or within any Lot or Lots. Each Owner is encouraged to install personal security devices upon and within such Owner's Dwelling Unit to the same extent that would be prudent if the System did not exist.

(e) The System will be installed based upon the representations of vendors regarding the operation and performance capabilities of the components of the Systems. THE DECLARANT DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, AND THE DECLARANT MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY NATURE WHATSOEVER REGARDING THE SYSTEM, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR THE PURPOSE FOR WHICH IT WAS DESIGNED. The Declarant does not expressly or impliedly guarantee that the System will avert or prevent occurrences or consequences which the System is designed to avert or prevent.

(f) The System shall be owned, operated, and maintained by the Association at its sole cost and expense. The Declarant shall not be required to operate or maintain the System.

4.14 Zero Lot Line Easement. Each Lot having a zero side or zero lot line as shown on the Plat, and the Owner of such Lot are hereby granted an easement on the adjacent Lot and any applicable Common Property of five (5) feet in width along and adjacent to such zero lot line side for the purpose of repair and maintenance of such Owner's Improvements and Structures adjacent thereto.

ARTICLE V

COVENANTS FOR ASSESSMENT AND CREATION OF LIEN

5.1. Creation of the Lien and Personal Obligation of Assessment. The Declarant, for each Lot owned by it within the Community, hereby covenants and agrees, and each subsequent Owner of any Lot, by acceptance of a Deed therefor, whether or not reference to these Covenants shall be so expressed in any such Deed or other conveyance, shall be deemed to have covenanted and agreed (and such covenant and agreement shall be deemed to constitute a portion of the purchase money and consideration for acquisition of the Lot so as to have affected the purchase price) to pay to the

Association (or to an independent entity or agency which may be designated by the Association to receive such monies):

- (a) Annual Assessments;
- (b) Special Group Assessments, to be fixed, established and collected from time to time as hereinafter provided; and
- (c) Individual Assessments and fines levied by the Board against individual Owners or Members to reimburse the Association for (i) extra or unusual costs incurred for items such as (but not limited to) (A) maintenance and repairs to portions of the Community required to be made as a result of the willful or negligent acts of the individual Owner, Member or Resident; or (B) the remedy, cure or minimizing of problems caused by, or as a result of, violations of these Covenants by an Owner, Member or Resident; and (C) costs incurred relating to or resulting from violations by individual Owners, Members or Residents of rules and regulations pertaining to the Association and/or the Common Properties.

The Annual, Special Group, and Individual Assessments, together with such late charges, interest and costs of collection thereof as are hereinafter provided, shall be a charge running with the land and shall be a continuing lien upon each Lot against which each such Assessment is made and shall also be the continuing personal obligation of the then-existing Owner or Member of such Lot at the time when the Assessment fell due. Each Owner of each Lot shall be directly liable and responsible to the Association for the acts, conduct and omission of each and every Member and Resident and their respective Bona-Fide Lessees, guests, invitees and employees, associated with the Dwelling Unit(s) or Structures located on such Owner's Lot.

5.2. Purposes of Assessments; Maintenance of the Common Properties.

(a) The Assessments levied by the Association shall be used for the purposes of promoting the comfort, health, recreation, safety, convenience, welfare and quality of life of the Members of the Association and in supplementing some services and facilities normally provided by or associated with governmental or quasi-governmental entities, and otherwise for the improvement and maintenance of the Common Properties, including, walkways, hiking and biking trails, ponds, recreational areas, Streets (and Alleys) and other properties, services and facilities devoted and related to the use and enjoyment of the Common Properties and operation of the Association, including, but not limited to or for: (i) the payment of taxes on the Common Properties and insurance in connection with the Common Properties; (ii) the payment for utilities and the repair, replacement and additions of various items within the Common Properties; (iii) paying the cost of labor, equipment (including the expense of leasing any equipment) and materials required for, and management and supervision of, the Common Properties; (iv) carrying out the duties of the Board as set forth in Article VI of this Declaration; (v) carrying out the other various matters set forth or envisioned herein or in any Amended Declaration related hereto; (vi) performing certain Yard Maintenance, as contemplated by the provisions of subparagraph (b) below, and (vii) for any matter or thing designated by the City in connection with any zoning, subdivision, platting, building, development or occupancy requirements. The items and areas described above are not intended to be exhaustive but merely illustrative.

(b) Certain of the Yards, as designated by the Declarant and its sole discretion and situated within the Community, may be maintained by the Association with sums provided by

Assessments to be funded by the Owners of Lots and such maintenance shall include and be limited to the items included within the defined term "Yard Maintenance." In the event the Association elects to maintain any Yard(s), each Owner of such Yard shall be obligated to immediately advise the Board from time to time in writing of any adverse condition or problem affecting or relating to the Yard Maintenance conducted for such Owner as a condition precedent to any obligation of the Association to correct such adverse condition or problem. In the event that the Board shall at any time determine, in its sole discretion, that the correction of any adverse condition or problem relating to any Yard Maintenance is or should be the responsibility of an Owner and not the Association, then the costs of such maintenance and correction, if carried out by the Board, shall be charged to such Owner and shall be payable by such Owner within fifteen (15) days after receipt of a statement from the Board requesting payment therefor. Under no circumstance shall any member of the Board or any officer or agent of the Association be liable to any Owner for any action or inaction of the Board with respect to any Yard Maintenance, and each Owner hereby releases and relinquishes forever any claims, demands or actions which such Owner may at any time have or be deemed to have against the Board, any member of the Board or the Association with regard to Yard Maintenance, whether arising out of the alleged negligence, misfeasance, malfeasance (but not gross negligence or willful misconduct) of any agent of the Association, any officer of the Association or any member of the Board.

5.3. Covenant and Amount of Annual Assessments and Special Group Assessments.

(a) Except as provided in Section 5.3(b) below, regular Annual Assessments and Special Group Assessments in respect to the Common Properties shall be borne one hundred percent (100 %) by the Owners of the Lots and, if applicable as provided herein, the Declarant.

(b) Until written notice is given by the Declarant to the Association that Declarant has substantially completed the Improvements to be constructed by Declarant and with respect to which Declarant has entered into a bonding Agreement with the City of Provo, regular Annual Assessments with respect to the Common Properties shall be borne solely by the Declarant. Thereafter, the regular Annual Assessments for the current Fiscal Year, or portion thereof, in respect to the Common Properties shall be established and assessed in the following manner:

(i) Personal Obligation of Assessments and Maintenance Charges. Except as otherwise provided in Section 5.3 (b) (x) below, the Declarant, for each Lot and Parcel hereafter established within the community, hereby covenants and agrees, and each Owner by acceptance of a Deed or other conveyance of a Lot or Parcel (whether or not it shall be so expressed in such Deed or conveyance) is deemed to covenant and agree, to pay to the Association the following assessments and charges: (1) Annual Assessments established by this Section 5.3, (2) Special Group Assessments for capital improvements or other extraordinary expenses or costs established by this Section 5.3, and (3) Maintenance Charges established by this Declaration. All such Assessments shall be established and collected as hereinafter provided. No diminution or abatement of Annual Assessments, Special Group Assessments, Maintenance Charges or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any Municipal authority or other governmental authority, the obligation to pay Annual Assessments, Special Group Assessments or Maintenance Charges being a separate and independent covenant on the

part of each Owner. The Annual Assessments, Special Assessments and Maintenance Charges together with interest, costs and reasonable attorney's fees, shall be a charge on the Lot or Parcel and shall be a continuing servitude and lien upon the Lot or Parcel against which each such Assessment is made. The Annual and Special Assessments against each Lot or Parcel shall be based on the number of Memberships appurtenant to the Lot or Parcel, except as otherwise determined by Declarant. Each such Annual and Special Group Assessment and Maintenance Charge, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner of the Lot or Parcel at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by them. However, the lien for any unpaid Assessments existing at the time of transfer shall continue, notwithstanding such transfer, until the Assessments have been paid in full.

(ii) Annual Assessments. Annual Assessments shall be computed and assessed against all Lots and Parcels as follows:

A. Community Expense. Annual Assessments shall be based upon advance estimates of the Association's cash requirements to provide for payment of all estimated expenses arising out of or connected with the maintenance and operation of the Common Properties and operating the Association. Such estimated expenses may include, without limitation, the following: expenses of management; real property taxes and Special Group Assessments (unless and until the Lots and Parcels are separately assessed); premiums for all insurance that the Association is required or permitted to maintain hereunder; repairs and maintenance; wages of Association employees, utility charges; legal and accounting fees; any deficit remaining from a previous period; creation of an adequate contingency reserve, major maintenance reserve and/or sinking fund; creation of an adequate reserve fund for maintenance, repairs, and replacements that must be replaced on a periodic basis; and any other expenses and liabilities which may be incurred by the Association for the benefit of the Members under or by reason of this Declaration. Such shall constitute the Community Expense, and all funds received from assessments under this Section shall be part of the Community Expense Fund. Two separate and distinct funds shall be created and maintained hereunder, one for operating expenses and one for capital expenses which together shall constitute the Community Expense Fund.

B. Acquisition Fee. In addition to regular Annual Assessments, Special Group Assessments and Individual Assessments, each Owner of a Lot shall be obligated, at the time of the purchase of the Lot by such Owner and simultaneously therewith, to pay the Association a sum of One Hundred Fifty Dollars (\$150.00) as a one-time acquisition and transfer fee to supplement the funds of the Association.

C. Apportionment. Community Expenses shall be apportioned among and assessed to all Members in accordance with Section 5.3 (b)(ii) based on the number of Memberships appurtenant to the Lot or Parcel; provided, however, during the Development Period the Declarant shall have the unilateral right to establish different classifications of Lots, which may result in a different apportionment of the regular Annual Assessments with respect to each such classification, as determined by the Declarant. Notwithstanding the foregoing, after the Development Period, the

Community Expenses shall be apportioned among and assessed to all Members in accordance with the uniform rate of Assessment set forth in Section 5.3 (b)(iii) below.

D. Annual Budget. Annual Assessments shall be determined on the basis of a Fiscal Year beginning January 1 and ending December 31 next following, provided the first Fiscal Year shall begin as provided in Section 5.3 (b)(vi) and on or before November 1 of each year thereafter, the Board shall prepare and make available to each Member, or cause to be prepared and to be made available to each Member, an operating budget for the upcoming Fiscal Year. The budget shall itemize the estimated Community Expenses for such fiscal year, anticipated receipts (if any) and any deficit or surplus from the prior operating period. The budget shall serve as the supporting document for the Annual Assessment for the upcoming Fiscal Year and as the major guideline under which the Community shall be operated during such annual period.

E. Notice and Payment. Except with respect to the first Fiscal Year, the Board shall notify each Member in writing as to the amount of the Annual Assessment against his or her Lot on or before December 1 each year for the Fiscal Year beginning on January 1 next following. Except as otherwise provided by the Board, the Annual Assessment shall be paid in twelve equal installments due on the first day of each calendar month during the Fiscal Year to which the Assessment *relates*; provided, however, the Annual Assessment for the first Fiscal Year shall be based upon such portion of the first Fiscal Year. The Members shall commence payment of the full Annual Assessments against their respective Lots as provided in this Section 5.3 above. All unpaid installments of any Annual Assessment shall bear interest at the rate established by the Board, not to exceed eighteen percent (18%) per annum, from and after fifteen (15) days after the date each such installment became due until paid, and the Member shall be liable for late fees as determined by the Board, and all costs, including attorneys' fees incurred by the Association in collecting the same. In addition, in the event that any installment of the Annual Assessment is not paid within fifteen (15) days of the date such installment becomes due, the Association may, at its option, and upon fifteen (15) days prior written notice to the Member, accelerate the due date for all remaining unpaid installments of the Annual Assessment for the remainder of the Fiscal Year and all accrued but unpaid interest thereon. Payment of the Annual Assessment so accelerated shall be due at the expiration of said fifteen (15) day notice period and interest shall accrue on the entire sum at the rate established by the Board not to exceed eighteen percent (18%) per annum from such date until paid in full. The failure of the Board to give timely notice of any Annual Assessment as provided herein shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Member from the obligation to pay such Assessment or any other Assessment.

F. Inadequate Funds. In the event that the Community Expense Fund proves inadequate at any time for whatever reason, including nonpayment of any Member's Assessment, the Board may, on behalf of the Association, levy additional Special Group Assessments in accordance with the procedure set forth in Section (iv) below, except that the vote therein specified shall be unnecessary.

(iii) Uniform Rate of Assessment. Except as provided in Section 5.3(b)(ii)C, The amount of any Annual or Special Assessment against each Lot or Parcel shall be fixed at a

uniform rate per Membership. Anything in this Section (iii) to the contrary notwithstanding, if, after an Assessments record date but before the end of the Fiscal Year for which it is levied, an Assessable Property is added to the Community or an Exempt Property becomes Assessable Property, then each Assessment which would have been levied against such Assessable Property for such Fiscal Year if it were not Exempt Property shall be due on the later of (a) the date on which such Assessment would have been due, if such part of the Community had been Assessable Property on such record date, or (b) the date on which such Assessable Property becomes subject to Assessment levy. If an Assessable Property is added to the Community as provided for above, the Association shall be deemed, automatically and without the need for further action, to have levied against it each Annual or Special Assessment for such Fiscal Year which the Association has levied against the other Assessable Properties. Each such Assessment levied against such Assessable Property shall be in an amount determined under this Section (iii) as if it were eligible for such levy on such record date, but then reduced in proportion to the number of days (if any) in such Fiscal Year elapsed as of (and including) the date on which such Exempt Property or Additional Property becomes an Assessable Property.

(iv) Special Group Assessments for Capital Improvements and Extraordinary Expenses. In addition to the Annual Assessments authorized above, the Association may levy, in any Assessment Period, a Special Group Assessment applicable to that period only for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Association land or Common Properties, including fixtures and personal property related thereto; or for the purpose of defraying other extraordinary expenses; provided that any such Assessment shall have the assent of either the Declarant or at least sixty-seven percent (67%) of the votes of the Members voting at a meeting duly called for such purpose or by written approval of such Members as applicable. The provisions of this Section (iv) are not intended to preclude or limit the assessment, collection or use of Annual Assessments for the aforesaid purposes.

(v) Notice and Quorum for Any Action Authorized Under Section 5.3(b)(iv). Written notice of any meeting called for the purpose of taking any action authorized under Section (iv) shall be sent to all Members no less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called for the consideration of a Special Group Assessment, the presence of Members entitled to cast thirty percent (30%) of all the votes (exclusive of suspended voting rights), or Declarant, as applicable, shall constitute a quorum. With respect to the determination of a quorum for Class A Members, voting Members having the authority to cast thirty percent (30%) of the Class A votes shall constitute a quorum of the Class A Members. 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 one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

(vi) Establishment of Annual Assessment Period. The period for which the Annual Assessment is to be levied (the "Assessment Period") shall be a calendar year, except that the first Assessment Period shall commence August 1, 2001 and terminate on December 31 of such year. The Board in its sole discretion from time to time may change the Assessment Period by Recording with the County Recorder of Utah County, Utah, an instrument specifying the new Assessment Period.

(vii) Rules Regarding Billing and Collection Procedures: The Board shall have the right to adopt rules setting forth procedures for the purpose of making the Assessments provided herein and for the billing and collection of the Annual and Special Group Assessments and the Maintenance Charges imposed pursuant hereto, provided that said procedures are not inconsistent with the provisions hereof. The failure of the Association to send a bill to a Member shall not relieve any Member of his or her liability for any Assessment or charge under this Declaration, but the Assessment Lien therefor shall not be foreclosed or otherwise enforced until the Member has been given not less than fifteen (15) days written notice prior to the commencement of such foreclosure or enforcement, at the address of the Member on the records of the Association, that the Assessment or any installment thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after the delinquency of such payment. The Association shall be under no duty to refund any payments received by it even though the ownership of a Membership changes during an Assessment Period; successor Owners of Lots or Parcels shall be given credit for prepayments, on a prorated basis, made by prior Owners. In case the Owner of a Membership becomes liable for payment of an increased sum pursuant to Section (iii) above during the Assessment Period, he or she shall notify the Association but his or her failure to notify the Association shall not relieve him or her of the liability for such amounts. The amount of the Annual Assessment against Members who become such during an Assessment Period shall be prorated and such new Members shall not be liable for any previously levied Special Group Assessments.

(viii) Community Expense Funds. The Association shall establish and maintain two (2) separate and distinct funds, one for the periodic regular maintenance and repair of the Community and for other routine operating expenses and one for replacement of Improvements to the Common Properties the Association may be obligated to maintain, repair or replace. These two (2) funds shall be maintained out of Annual Assessments for Community Expenses.

(ix) Evidence of Payment of Annual and Special Group Assessments and Maintenance Charges. Upon receipt of a written request by a Member, the Association within a reasonable period of time thereafter shall issue to such Member a written certificate stating (a) that all Annual and Special Group Assessments and Maintenance Charges (including interest, costs and attorneys' fees, if any, as provided herein) have been paid with respect to any specified Lot or Parcel as of the date of such certificate, or (b) if all Annual and Special Group Assessments and Maintenance Charges have not been paid, the amount of such Annual and Special Group Assessments and Maintenance Charges (including interest, costs and attorneys' fees, if any) due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificates, which charges must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matter therein stated as against any bona fide purchaser of, or Mortgagee on, the Lot or Parcel in question.

(x) Property Exempted from the Annual and Special Group Assessments and Assessment Lien. Exempt Property shall be exempt from the assessment of the Annual and Special Group Assessments, but such property shall not be exempt from the Maintenance Charges; provided, however, that in the event any change of ownership of Exempt Property results in all or any part thereof becoming Assessable Property in any year, the same thereupon shall be subject to the assessment of the Annual and Special Group Assessments (prorated as of the date it became assessable property) and the Assessment Lien.

(xi) Declarant Duty to Fund Deficits. During any Fiscal Year in which Declarant owns one or more Lots or Parcels which are Exempt Properties due to such ownership thereof, and would not constitute Exempt Properties under any other part of such definition, Declarant shall be obligated to fund to or for the account of the Association, at such time or times as such funding is reasonably required by the Association during such Fiscal Year, an aggregate amount for such Fiscal Year equaling the total amount of the following: The lesser of (i) the total amount which Declarant would have owed to the Association on account of any Annual and Special Group Assessments which, if such Exempt Properties had been Assessable Properties, would have been levied against them for such Fiscal Year; or (ii) any excess, for such Fiscal Year, of the actual Community Expenses over the aggregate Annual and Special Group Assessments levied against all Assessable Properties in the Community.

5.4 Enforcement of Payment of Annual and Special Group Assessments and Maintenance Charges and Enforcement of Assessment Lien

(a) Association as Enforcing Body. The Association, as the agent and representative of the Members, shall have the exclusive right to enforce the provisions of this Declaration. However, if the Association shall fail or refuse to enforce this Declaration or any provision hereof for an unreasonable period of time after written request to do so, then any Member may enforce them at his or her own expense by any appropriate action, whether in law or in equity.

(b) Association's Remedies to Enforce Payment of Annual and Special Group Assessments and Maintenance Charges. If any Member fails to pay the Annual or Special Group Assessments when due, or to pay Maintenance Charges assessed, the Association may enforce the payment of the Annual or Special Group Assessments, Maintenance Charges and/or Assessment Lien by taking one or more of the following actions, concurrently or separately (and by exercising either of the remedies hereinafter set forth, the Association does not prejudice or waive its right to exercise the other remedy):

(i) Bring an action at law and recover judgment against the Member personally obligated to pay the Annual or Special Group Assessments or the Maintenance Charges;

(ii) Foreclose the Assessment Lien against the Lot or Parcel in accordance with the then prevailing Utah law relating to the foreclosure of realty mortgages or deeds of trust (including the right to recover any deficiency), the method recognized under Utah law for the enforcement of a mechanic's lien which has been established in accordance with Chapter 1, Title 38, Utah Code Annotated, as amended from time to time, or any other means permitted by law, and the Lot or Parcel may be redeemed after foreclosure sale if provided by law. In order to facilitate the foreclosure of any such lien in the manner provided at law for the foreclosure of deeds of trust, Declarant hereby designates First American Title Insurance Company as trustee and grants and conveys the Community, IN TRUST, to First American Title Insurance Company, as trustee with full power of sale, to foreclose any such liens as directed by the Board. The Board may, at any time, designate one or more successor trustees, in the place of First American Title Insurance Company, in accordance with provisions of Utah law for the substitution of trustees under deeds of trust. Such trustee, and any successors, shall not have any other right, title or interest in the Community beyond those rights and interests necessary and appropriate to

foreclose any liens against Lots or Parcels arising pursuant hereto. The Trustee shall satisfy first, all the expenses of advertising the sale and making the conveyance, including a reasonable commission to itself, which commission shall be due and owing in addition to the attorney's fees herein provided for, and then to the Association the full amount of principal, interest, attorney's fees and other charges and unpaid on such indebtedness secured hereby, rendering the balance of the sales price, if any, to the Owner, his or her or its heirs, executors, administrators, devisees, personal representatives, successors and assigns and/or to other lien holders (if so required by Utah Law); and the recitals in the conveyance to the purchaser or purchasers shall be full and conclusive evidence of the truth of the matter stated therein, and such sale and conveyance shall be conclusive against the Owner. In any such foreclosure, the Owner of the Lot or Parcel being foreclosed shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees), and such costs and expenses shall be secured by the lien being foreclosed. The Association shall have the power to bid at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots or Parcels purchased at such sale. The Association, if it is the highest bidder, shall have the right to purchase at any sale of the Lot in question and to have the amount for which such Lot is sold credited on the debt then owing. The Assessment Lien shall be a continuing lien and the foreclosure thereof on one or more occasion shall not remove, replace, impair or extinguish the same continuing Assessment Lien from securing all obligations arising from and after the date of foreclosure.

(iii) Notwithstanding subordination of an Assessment Lien as described in Section 5.4(c) below, the delinquent Member shall remain personally liable for the Assessments and related costs after the applicable membership is terminated by foreclosure or deed in lieu of foreclosure or otherwise.

(c) Subordination of Assessment Lien to First Mortgage: Priority of Lien. The Assessment Lien provided for herein shall be subordinate to any First Mortgage and shall also be subject and subordinate to liens for taxes and other public charges which by applicable law are expressly made superior. Except as above provided, the Assessment Lien shall be superior to any and all charges, liens or encumbrances which hereafter in any manner may arise or be imposed upon each Lot or Parcel. Sale or transfer of any Lot or Parcel shall not affect the Assessment Lien; provided, however, that if the sale or transfer is pursuant to foreclosure of a First Mortgage to which the Assessment Lien is subordinate, or pursuant to any sale or proceeding in lieu thereof, the purchaser at the mortgage foreclosure or deed of trust of sale, or any grantee taking by deed in lieu of foreclosure, shall take the Lot or Parcel free of the Assessment Lien for all Annual and Special Group Assessments and Maintenance Charges that have accrued up to the date of issuance of a sheriff's or a trustee's deed or deed in lieu of foreclosure; provided, however, that such First Mortgage foreclosure sale purchaser or grantee shall take subject to all Annual and Special Group Assessments, Maintenance Charges and the Assessment Lien therefor accruing subsequent to the date of issuance of a sheriff's or trustee's deed or deed given in lieu of foreclosure. Notwithstanding the foregoing, such subordination shall apply only to (i) the Assessments which have been due and payable prior to any foreclosure sale (whether public or private) of such Lot pursuant to the terms and conditions of any such First Mortgage or deed of trust or tax lien; and (ii) the permitted Assessment Lien on the Lot alone and not on or to any easement appurtenant for use and enjoyment of the Common Properties. Any foreclosure sale shall not relieve such Lot from liability for the amount of any Assessment thereafter becoming due nor from the lien of any subsequent assessment. Such subordination shall not apply where the First Mortgage or deed of trust or tax lien is used as a device, scheme or artifice to evade the obligation to pay Assessments and/or to hinder the Association in performing its functions hereunder.

(d) Costs to be Borne by Member in Connection with Enforcement of Payment of Annual and Special Group Assessment and Maintenance Charges. In any action taken pursuant to Section (b) above, the Member shall be personally liable for, and the Assessment Lien shall be deemed to secure the amount of, the Annual and Special Group Assessments and Maintenance Charges together with interest and the Association's collection costs and attorneys' fees, including those costs and fees specified in Section 5.3(c)(ii)(D).

ARTICLE VI

GENERAL POWERS AND DUTIES OF THE ASSOCIATION

6.1 Formation of Association. The Association shall be a Utah nonprofit corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws and this Declaration. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

6.2 Board of Trustees and Officers. The affairs of the Association, prior to the Class B Conversion Date, shall be managed by a Board of Three (3) individuals appointed by the Declarant. From and after the Class B Conversion Date, the affairs of the Association shall be managed by a Board of up to five (5) Trustees (odd numbered totals only) whom shall be elected by the Members and such officers as the Board shall elect or appoint in accordance with the Articles and the Bylaws as the same may be amended from time to time. The Trustees need not be Members of the Association. Other than the constitution of the initial Boards of Trustees to be elected immediately following the Class B Conversion Date, Trustees shall be elected for two (2) year terms of office and shall serve until their respective successors are elected and qualified. The terms of office for the Trustees constituting the initial Board elected immediately following the Class B Conversion Date shall be one (1) year for two (2) of the Trustees and two (2) years for the other three (3) Trustees. A vacancy which occurs in the Board, by reason of death, resignation, removal, or otherwise of a Trustee appointed by the Declarant or elected by the Members may be filled at a meeting of the Board by the affirmative vote of the majority of the remaining Trustees representing the Declarant or the Members as applicable, which elected the Trustee whose position has become vacant. Any Trustee elected to fill a vacancy shall serve in such capacity until the expiration of the term of the Trustee whose position he or she was elected to fill. The Board may also appoint various committees and appoint a Manager who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Association. The Board shall determine the compensation to be paid to the Manager. The Board's responsibilities shall include, but shall not be limited to, the following:

- 6.2.1 administration, including administrative support as required for the ACC;
- 6.2.2 preparing and administering an operational budget;
- 6.2.3 establishing and administering a reserve fund;
- 6.2.4 scheduling and conducting the annual meeting and other meetings of the Members;

- 6.2.5 collecting and enforcing the Assessments;
- 6.2.6 accounting functions and maintaining records;
- 6.2.7 promulgation and enforcement of the Community Rules and the Design Guidelines;
- 6.2.8 maintenance of the Common Properties;
- 6.2.9 supplementing (to the extent, if any, deemed appropriate or affordable by the Board) the police, fire, ambulance, garbage and trash collection and similar services within the community;
- 6.2.10 payment of taxes, insurance and utilities which pertain to the Common Properties;
- 6.2.11 payment for services of any Person (including the Declarant and any affiliates of the Declarant) to manage the Association or any separate portion thereof, to the extent deemed advisable by the Board;
- 6.2.12 payment of legal and accounting services and all costs and expenses reasonably incurred by the Board;
- 6.2.13 enter into agreements or contracts with insurance companies, taxing authorities, holders of mortgage liens and utility companies with respect to any taxes on the Common Properties, monthly escrow and impound payments, utility installation, consumption and service matter, and the escrowing or impounding of monies sufficient to pay Annual Assessments as required;
- 6.2.14 borrow funds to pay costs of operation, secured by such assets of the Association as deemed appropriate by the lender and the Association (including, without limitation, borrowing of funds from Declarant);
- 6.2.15 enter into contracts, maintain one or more bank accounts and, generally, to have all powers necessary or incidental to operation and management of the Association;
- 6.2.16 protect and defend the Common Properties by suit or otherwise on behalf of the Association and to provide adequate reserves;
- 6.2.17 make reasonable rules and regulations for the operation of the Common Properties and to amend them from time to time and enter into concession agreements regarding food, beverage and other products or services;
- 6.2.18 prepare operating budgets;
- 6.2.19 adjust, collect and use any insurance proceeds to repair damaged or replace lost property, and if proceeds are insufficient to repair damaged or replaced lost property and assess the Owners in proportionate amounts to cover the deficiency;

6.2.20 enforce provisions of this declaration and any rules made hereunder or by the Board and to enjoin and seek damages from any Owner, Member or Resident for violation of such provisions or rules; and

6.2.21 all the other duties imposed upon the Board pursuant to the Governing Documents, including enforcement thereof.

The Board shall not, however, be responsible for those duties and areas of operation specifically designated under the Governing Documents as the responsibility of the ACC. If for any reason prior to the Class B Conversion Date, the Board is not deemed authorized to act for and on behalf of the Association, and the Owners, Members and Residents, then the Declarant may exercise the powers and authority granted in this Article VI to act for and on behalf of the Association, the Owners, the Members and the Residents, and the Association shall reimburse the Declarant for any and all reasonable expenses incurred in so acting.

6.3 The Community Rules. By a majority vote, the Board may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations to be known as the Community Rules. The Community Rules may restrict and govern the use of any area by any Member or Resident, by the family of such Member, or by any invitee of such Member; provided, however, that the Community Rules shall not discriminate among Members and shall not be inconsistent with the Governing Documents.

6.4 Personal Liability. No Trustee or member of any committee of the Association (including but not limited to the ACC), no officer of the Association nor any Manager or other employee of the Association shall be personally liable to any Member or to any other Person, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board, the Manager, any representative or employee of the Association or any committee, committee member or officer of the Association; provided however, the limitations set forth in this Section 6.4 shall not apply to any Person who has failed to act in good faith or has engaged in willful or intentional misconduct.

6.5 Professional Management. The Association may carry out through the Manager those of its functions which are properly subject to delegation. The Manager so engaged shall be an independent contractor and not an agent or employee of the Association, shall be responsible for managing the Community for the benefit of the Association and the Owners, and shall, to the extent permitted by law and by the terms of the agreement with the Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Association itself.

6.6 Implied Rights. The Association may exercise any right or privilege given to it expressly by the Governing Documents, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the Members. The Board shall have the right to institute, defend, settle, or intervene on behalf of the Association in mediation, binding or non binding arbitration, litigation, or administrative proceedings in matters pertaining to the Common Properties; enforcement of the Governing Documents; enforcement of the Covenants set forth in this Declaration and/or any covenant, restriction, reservation, charge, easement, lien, or assessment provided for in any contract, deed or other instrument which shall have been executed pursuant to this Declaration or which is intended to be enforced by the Association; or in

furtherance of any other civil claim or action. However, the Governing Documents shall not be construed as creating any independent legal duty to institute litigation on behalf of or in the name of the Association or its Members. In exercising the Association's rights and powers, making decisions on behalf of the Association, and conducting the Association's affairs, Board Trustees shall be subject to, and their actions shall be judged in accordance with, the standards set forth in the Bylaws. The Board shall have the power and right to change the use or the interest of the Association in the Common Properties or other portions of the Community in any manner deemed necessary or helpful by the Board to accommodate the use of the Community or the Common Properties, provided that such use shall not be inconsistent with any deed restrictions, zoning regulations or a final recorded Plat. The Association may enter into contracts and transactions with others, including the Declarant and its affiliated companies, and such contracts or transactions shall not be invalidated or in any way affected by the fact that one or more Board members or officers of the Association or members of any committee are employed or otherwise connected with the Declarant or its affiliates. Any such Board member, officer or committee member may be counted in determining the existence of a quorum at any meeting of the Board or committee and may vote thereat to authorize any contract, transaction or approval with the like force and effect as if he or she were not so interested.

ARTICLE VII

USE OF FUNDS; BORROWING POWER

7.1 Purposes for Which Association's Funds May Be Used. The Association shall apply all funds and property collected and received by it (including the Annual and Special Group Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the common good and benefit of the Community and the Members and Residents by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any kind and all land, properties, Improvements, facilities, services, projects, programs, studies and systems, within the Community, which may be necessary, desirable or beneficial to the general common interests of the Community, the Members and the Residents. The following are some, but not all, of the areas in which the Association may seek to aid, promote and provide for such common benefit: social interaction among Members and Residents; maintenance of landscaping; recreation; insurance; communications; transportation; health; utilities; public services; safety and indemnification of officers and directors of the Association. The Association also may expend its funds as otherwise permitted under the laws of the State of Utah.

7.2 Borrowing Power. The Association may borrow money for the common good and benefit of the Community in such amounts, at such rates, upon such terms and security, and for such periods of time as is necessary or appropriate as determined by the Board without a vote of the Members.

7.3 Association's Rights in Spending Funds From Year to Year. The Association shall not be obligated to spend in any year all the sums received by it in such year (whether by way of Annual or Special Group Assessments, fees or otherwise), and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of Annual Assessment in the succeeding year if a surplus exists from a prior year and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

MAINTENANCE

8.1 Common Properties and Rights-of-Way. The Association, or its duly delegated representative, shall maintain and otherwise manage all Common Properties, including, but not limited to, the landscaping, walkways, paths, parking areas, drives, recreational facilities and the roofs, interiors and exteriors of the buildings and structures located upon said Common Properties; provided, however, the Association shall not be responsible for providing or maintaining the landscaping or structures on any Common Properties which are part of Lots or Parcels unless (i) such landscaping or structures are available for use by all Owners and Residents or are within easements intended for the general benefit of the Community and (ii) the Association assumes in writing the responsibility as hereinafter provided. The Association shall also maintain any landscaping and roadways which are (i) any landscaping and other Improvements not on Lots and Parcels which are within the exterior boundaries of the Community, and (ii) all parkstrips in the Community. Notwithstanding the foregoing or anything contained in this Declaration to the contrary, the Association shall not, unless approved by the Board, maintain areas which (i) are owned by municipal authority or (ii) are to be maintained by the Owners of a Lot or Parcel. Specific areas to be maintained by the Association shall be identified on Plats recorded or approved by the Declarant, but the failure to so identify such areas shall not affect the Association's rights or responsibilities with respect to such Common Properties and other areas intended for the general benefit of the Community.

The Association may, subject to any applicable provisions on Special Group Assessments for capital Improvements, in the discretion of the Board:

8.1.1 Reconstruct, repair, replace or refinish any Improvement or portion thereof upon Common Properties;

8.1.2 Construct, reconstruct, repair, replace or refinish any road Improvement or surface upon any portion of the Common Property used as a road, street, walk, driveway or parking area;

8.1.3 Replace injured and diseased trees and other vegetation in any Common Properties, and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes;

8.1.4 Place and maintain upon any Common Properties such signs as the Board may deem appropriate for the proper identification, use and regulation thereof;

8.1.5 Do all such other and further acts which the Board deems necessary to preserve and protect the Common Properties and the beauty thereof, in accordance with the general purposes specified in this Declaration;

8.1.6 The Board shall be the sole judge as to the appropriate maintenance of all Common Properties and other properties maintained by the Association. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of said properties shall be taken by the Board or by its duly delegated representative; and

8.1.7 In the event any Plat, Neighborhood Declaration, Supplemental Declaration, Deed restriction or this Declaration permits the Board to determine whether or not Owners of certain Lots or Parcels will be responsible for maintenance of certain Common Properties or public right-of-way areas, the Board shall have the sole discretion to determine whether or not it would be in the best interest of the Owners and Residents of the Community for the Association or for an individual Owner to be responsible for such maintenance, considering cost, uniformity of appearance, location and other factors deemed relevant by the Board. The Board may cause the Association to contract with others for the performance of the maintenance and other obligations of the Association under this Article VIII and, in order to promote uniformity and harmony of appearance, the Board may also cause the Association to contract to provide maintenance services to Owners of Lots and Parcels having such responsibilities in exchange for the payment of such fees as the Association and Owner may agree upon.

8.2 Assessment of Certain Costs of Maintenance and Repair of Common Properties and Public Areas. In the event that the need for maintenance or repair of Common Properties, structures and other property maintained by the Association is caused through the willful or negligent act of any Owner or Resident of a Lot or Parcel, or any family, guests, invitees or tenants of such Persons, the cost of such maintenance or repairs shall be added to and become a part of the Assessment to which such Owner and the Owner's Lot or Parcel is subject and shall be secured by the Assessment Lien. Any charges or fees to be paid by the Owner of a Lot or Parcel in connection with a contract entered into by the Association with an Owner for the performance of an Owner's maintenance responsibilities shall also become a part of such Assessment and shall be secured by the Assessment Lien.

8.3 Maintenance and Use of Lots and Parcels. Each Dwelling Unit, Improvement, Lot and Parcel shall be properly maintained by the Owner so as not to detract from the appearance of the Community and so as not to affect adversely the value or use of any other Dwelling Unit, Improvement, Lot or Parcel. In the event any portion of any Lot or Parcel is so maintained as to present a public or private nuisance, or as to detract from the appearance or quality of the surrounding Lots and Parcels or other areas of the Community which are substantially affected thereby or related thereto, or in the event any portion of a Lot or Parcel is being used in a manner which violates this Declaration or any Neighborhood Declaration or any Supplemental Declaration applicable thereto, or in the event the Owner of any Lot or Parcel is failing to perform any of its obligations under the Governing Documents and standards of the ACC, the Board may by resolution make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fourteen (14) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said 14-day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be added to and become a part of the Assessment to which the offending Owner and the Owner's Lot or Parcel is subject and shall be secured by the Assessment Lien. Without limiting the generality of the foregoing or creating any duty in connection therewith, the Association is hereby granted an easement in order that it may, at its option, perform such corrective action.

ARTICLE IX

INSURANCE: REPAIR: RESTORATION

9.1. Right to Purchase Insurance. The Association shall have the right and option to purchase, carry and maintain in force insurance covering any or all portions of the Common Properties, any improvements thereon or appurtenant thereto, for the interest of the Association, its Board, officers, managers, and agents, and of all Members of the Association, in such amounts and with such endorsements and coverage as shall be deemed appropriate by the Board and/or as specifically required by the Eligible Mortgagees or Eligible Insurers. Such insurance may include, but need not be limited to:

(a) Insurance against loss or damage by fire and hazards covered by a standard extended coverage endorsement in an amount which shall be equal to the maximum insurable replacement value, excluding foundation and excavation costs;

(b) Comprehensive public liability and property damage insurance on a broad form basis, including coverage of personal liability (if any) of the Board, and the Owners, Members and Residents with respect to the Common Properties;

(c) Fidelity bonds for all officers and employees of the Association having control over the receipt or disbursement of funds; and

(d) Liability insurance regarding the errors and omissions of Directors, officers, managers, employees and representatives of the Association.

9.2. Insurance and Condemnation Proceeds. The Association shall be the exclusive representative of the Owners, Members and Residents in any proceedings, negotiations, settlements or agreements concerning insurance or condemnation with respect to the Common Properties. The Association and the Members may use the net insurance or condemnation proceeds to repair and replace any damage or destruction of property, real or personal, covered by such insurance or condemnation. Any balance from the proceeds of insurance or condemnation paid to the Association, remaining after satisfactory completion of repair, restoration and replacement or after the Board has elected to waive the repair, restoration or replacement, shall be retained by the Association as part of a general reserve fund for repair, restoration, maintenance and replacement of the Common Properties.

9.3. Insufficient Proceeds. If the insurance or condemnation proceeds are insufficient to repair or replace any loss or damage, the Association may levy a Special Group Assessment as provided for in Article V of this Declaration to cover the deficiency.

9.4. Liability Insurance Arrangements. The Association will seek to carry public liability insurance generally covering bodily injury and property damage arising out of negligent acts by employees, Members or authorized representatives of the Association. The Declarant and Association will not carry any insurance pertaining to, nor does it assume any liabilities or responsibility for, the real or personal property of the Owners, Members and Residents (and their respective family members and guests). Each Owner, Member or Resident expressly understands, covenants and agrees with the Declarant and the Association that:

(a) neither the Declarant nor the Association has any responsibility or liability of any kind or character whatsoever regarding or pertaining to the real and personal property of any Owner, Member and Resident;

(b) each Owner, Member and Resident shall, from time to time and at various times, consult with reputable insurance industry representatives of each Owner's, Member's and Resident's own selection to select, purchase, obtain and maintain appropriate insurance providing the amount, type and kind of insurance deemed satisfactory to each Owner, Member and Resident covering his or her real and personal property.

ARTICLE X

ARCHITECTURAL CONTROL

10.1. Architectural Control Committee The Architectural Control Committee ("ACC") shall be composed of at least three (3) individuals, initially selected and appointed by the Declarant, who need not be Members of the Association. In the event of the death, incapacity, removal or resignation of any member of the ACC, the Declarant, during the Development Period, shall have full authority to designate and appoint a successor. From and after expiration the Development Period, the ACC members shall be selected, appointed and replaced, in the event of death, incapacity, removal or resignation, by the Board. A member of the ACC may be removed at any time with or without cause and without notice.

10.2. ACC Jurisdiction.

(a) No building, structure, fence, wall or improvement of any kind or nature shall be erected, placed or altered on any Lot until all plans and specifications have been submitted to and approved in writing by the ACC, or a majority of its members, as to:

- (i) quality of workmanship and materials, adequacy of site dimensions, proper facing of main elevation with respect to nearby streets, in compliance with this Declaration and/or the Design Guidelines and/or bulletins;
- (ii) finished floor elevation and proposed footprint of the Dwelling Unit;
- (iii) conformity and harmony of the external design, color, type and appearance of exterior surfaces and landscaping;
- (iv) drainage solutions;
- (v) vertical and horizontal specifications and limits of Dwelling Units on all Lots;
- (vi) the observance of and compliance with applicable setback lines and easement areas and the enhancement of aesthetic views and visual corridors to and from the Common Properties; and
- (vii) the other standards set forth within this Declaration (and any amendments hereto) or as may be set forth within the Design Guidelines, bulletins promulgated by the ACC, or matters in which the ACC has been vested with the authority to render a final interpretation and decision.

The ACC is authorized and empowered to collect such fee for its services set forth in this Article X as is determined by the Board and to consider and review any and all aspects of construction, location and landscaping, which may, in the reasonable opinion of the ACC, adversely affect the living enjoyment of one or more Owner(s) or Residents or the general value of the Community. In addition, the ACC shall be permitted to consider technological advances and changes in design and materials and such comparable or alternative techniques, methods or materials which may or may not be permitted, in accordance with the reasonable opinion of the ACC.

(b) The following is a general outline of the steps likely to be involved in the review of plans and specifications:

- (i) Submission of preliminary plans and specifications to the ACC; and
- (ii) Submission of final plans and specifications to the ACC.

(c) The ACC's approval of any plans and specifications shall not mean that all applicable building requirements of the City have been satisfied.

10.3. Design Guidelines. The ACC may, from time to time, publish and promulgate Design Guidelines and additions or revisions thereto, and such Design Guidelines shall be explanatory and illustrative of the general intent of the proposed development of Lots to be developed within the Community and are intended as a guide to assist the ACC in reviewing plans and specifications for Improvements to be located and constructed on each Lot. The ACC shall have the right, power and authority to establish and prescribe architectural restrictions and guidelines pertaining to items and topics such as (but not necessarily limited to):

- a) A site plan showing the "footprint" of the Structure, location of all existing trees (indicate size and type) and proposed Improvements, including but not limited to, Structures, patios, driveways, parking areas and structures, fences and walls.
- b) Exterior elevations (including, but not limited to, vertical and horizontal specifications and limits) of all proposed Structures.
- c) A description and samples of exterior materials, colors, textures and shapes of all Structures.
- d) Landscape plans, which shall include walkways, fences, walls, details, elevation changes, irrigation and watering systems, vegetation and ground cover (indicating size, spacing and quantity), and the protection and preservation of trees and other existing and introduced vegetation.
- e) The location of air conditioning compressors and pool equipment.
- f) Exterior illumination and location.
- g) Dimensional floor plan of all enclosed spaces and any garages or parking facilities (particularly where the garages face the street).

- (g) Mailbox location and design.
- (i) Drainage solutions.
- (j) Such other matters as may be required by the Zoning Ordinance and building codes of the City.
- (k) The items described within Section 10.2 above and any other data or information requested or deemed reasonably necessary by the ACC.
- (l) and such other safety and security devices which, from time to time, become technologically feasible for residential use as may be further described and defined by the ACC.

10.4 Preliminary and Final Plan Submissions.

(a) The ACC is authorized and empowered to and shall consider, review and comment on preliminary plans and specifications submitted in duplicate on an informal basis to assist Owners, developers, homebuilders and prospective purchasers of the Lots in complying with these Covenants and to assist in the completion of any feasibility studies undertaken by such persons or entities. The ACC shall have the right, however, to prescribe reasonable limitations concerning the time, effort and expense likely to be involved in handling such matters on an informal basis. If the preliminary plans and specifications are approved by the ACC, the Owner or the Owner's designated representative will be so advised by letter. If found not to be in compliance with these Covenants, the Owner or the Owner's designated representative will be so advised by letter containing a reasonably detailed statement and explanation of items found not to comply with these Covenants. If the ACC fails to approve or disapprove such plans and specifications within thirty (30) days after the actual date on which the submission is received, approval of the matters submitted shall be presumed to have been approved; provided however, that in no event shall the failure to formally approve such plans and specifications be deemed to have approved any plans and specifications that violate in any manner this Declaration, the Design Guidelines or the Zoning Ordinance. Comments on and approvals of preliminary plans and specifications shall be binding upon the ACC provided that conforming final plans and specifications are submitted within ninety (90) days of such preliminary comments or approvals.

(b) Final plans, specifications and surveys shall be submitted in duplicate to the ACC for approval or disapproval. The ACC is authorized to request the submission of samples of proposed construction materials. At such time as the plans, specifications and surveys meet the approval of the ACC, one complete set of plans, specifications and surveys will be retained by the ACC and the other complete set will be marked "Approved" and returned to the Owner of the Residential Lot in question or his/her/its designated representative. If found not to be in compliance with these Covenants, one set of such plans, specifications and surveys shall be returned marked "Disapproved," accompanied by a reasonably detailed statement and explanation of items found not to comply with these Covenants. Any modification or change to the approved set of plans, specifications and surveys shall be resubmitted to the ACC for its inspection and approval. The ACC's approval or disapproval, as required herein, shall be in writing. If the ACC fails to approve or disapprove such plans, specifications and surveys within thirty (30) days after the actual date on which the submission is received, then the ACC approval shall be presumed.

The ACC may from time to time publish and promulgate architectural standards bulletins and/or lot information sheets which shall be fair and reasonable and shall carry forward the spirit and intention of these Covenants. Such bulletins and lot information sheets shall supplement these Covenants and are incorporated herein by reference.

PRIOR TO THE ACQUISITION OF ANY INTEREST IN, AND CONSTRUCTION ON, A RESIDENTIAL LOT, EACH PROSPECTIVE PURCHASER, TRANSFEREE, MORTGAGEE AND OWNER OF ANY LOT IN THE COMMUNITY IS STRONGLY ENCOURAGED TO CONTACT THE DECLARANT OR THE ASSOCIATION OR THE ACC TO OBTAIN AND REVIEW AND BECOME THOROUGHLY FAMILIAR WITH ANY AND ALL ARCHITECTURAL STANDARDS, BULLETINS AND LOT INFORMATION SHEETS AND THE MOST RECENT DESIGN GUIDELINES WHICH WILL CONTROL THE DEVELOPMENT, CONSTRUCTION AND USE OF THE LOT IN QUESTION.

10.5 General

(a) The ACC shall be entitled, at any time and from time to time, to associate or employ a staff and to seek and obtain professional advice and counsel (including but not limited to Architects, attorneys, designers, engineers and landscape technicians) in connection with the performance of its duties with all reasonable costs and expenses related thereto paid for or reimbursed by the Association. The Association may, in turn, reasonably recoup some or all of these expenses from the applicants seeking review and approval of plans and specifications.

(b) The Declarant and/or the Association and/or the ACC may require any Owner to restore such Owner's Improvements or alteration to the condition existing prior to the construction thereof (including, without limitation, the demolition and removal of any unapproved improvement) if such improvements or alterations were commenced or constructed in violation of this Article X. In addition, the Declarant and/or the Association and/or the ACC may upon written notice to such Owner, but has no obligation to do so, cause such restoration, demolition and removal and levy the amount of the cost thereof as an Individual Assessment against the Lot upon which such Improvements or alterations were commenced or constructed. A material violation of these Covenants shall be deemed to have occurred if no prior express written approval of the appropriate ACC has been obtained where it was originally required, even if hindsight reveals that the actual plans and specifications would have been approved by the appropriate ACC had they been properly and timely submitted.

(c) Neither the Declarant, nor the Association, nor the ACC, nor the Board nor the officers, directors, managers, members, employees and agents of any of them, shall be liable in damages to anyone submitting plans and specifications to any of them for approval, or to any Owner affected by these restrictions by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. No approval of plans and specifications and no publication of any Design Guidelines, bulletins or lot information sheets shall be construed as representing or implying that such plans, specifications, guidelines, bulletins or sheets will, if followed, result in properly designed improvements and/or improvements built in a good and workmanlike manner. Every Person who submits plans or specifications, and every Owner of each and every Lot, agrees that he/she/it will not bring any action or suit against the Declarant, the Association, the ACC, the Board, or the officers, managers, members, employees and agents of any of them, to recover any such damages and each and every Owner hereby releases, remises and quitclaims all claims, demands and causes of action arising out of or in connection

with any judgment, negligence or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands and causes of action not known at the time the release is given.

(d) After reasonable notice to the Owner (and any applicable Resident), any member or agent of the applicable ACC may from time to time at any reasonable hour or hours enter and inspect any Lot or the Improvements located thereon subject to the jurisdiction of the applicable ACC to confirm improvement or maintenance or alteration in compliance with the provisions hereof. No improvements or addition or change or alteration thereof shall be constructed, erected, placed, altered or maintained on any Lot which is in violation of any pronouncement or determination of the ACC, the Zoning Ordinance, the existing restrictions or any of the other laws or ordinances of the City or any other applicable governmental laws, rules or regulations. However, the Declarant, the Association, the ACC and their respective officers, directors, managers, agents and employees shall have no obligation to enforce or to report the violation of any such law, ordinance, rule or regulation.

(e) The ACC shall have the power to grant variances, waivers, tolerances or modifications of the standards set forth within the Covenants under circumstances and conditions deemed reasonable, appropriate and prudent by the ACC. Matters of "quality", "adequacy" and "propriety" are to be considered by each ACC generally from an aesthetic standpoint, rather than from an engineering standpoint. Plans and specifications are not to be reviewed or approved for engineering or structural design or technical quality of materials, and by approving such plans and specifications neither the ACC, nor the members thereof, nor the Association assumes liability or responsibility therefor, nor for any defect in any Structure constructed from such plans and specifications.

ARTICLE XI

USE OF LOTS: PROTECTIVE COVENANTS

Each Lot situated in the Community and within all Land Use Classifications shall be constructed, developed, reconstructed, repaired, occupied and used in accordance with the following covenants, conditions, restrictions and reservations:

11.1 Lots. All Lots shall be residential. Lots shall not be further subdivided and, except for the powers and privileges herein reserved by the Declarant, the boundaries between Lots shall not be relocated without the prior express written consent of the ACC. Except for the Manor Homes as reflected on attached Exhibit "B", no Structure shall be erected, altered, placed or permitted to remain on any Lot other than one (1) Single Family Dwelling Unit and, if any, its customary and usual accessory structures (unless otherwise prohibited herein). A Dwelling Unit shall have only one front entrance, one address, and one electric meter and shall not have a separate second living unit or accessory apartment. Without limiting the foregoing, only a Single Family may occupy any Dwelling Unit on any Lot; provided, however, that the Declarant may, consistent with the Recorded Plat, elect to develop and construct the Manor Homes, as reflected on attached Exhibit "B", such that more than one Dwelling Unit or Condominium Unit is contained within each Structure located thereon. Notwithstanding anything in this Declaration to the contrary, the Declarant shall not be precluded or prohibited from creating or establishing a Residential Condominium Development within the part of the Community identified as the Manor Homes on attached Exhibit "B" and developing thereon Structures containing more than one Condominium Unit or Dwelling Unit. The Structures to be erected and permitted in the

Manor Homes shall be determined by the Declarant during the Development Period. No building or structure intended for or adapted to business or commercial purposes or commercial use shall be erected, placed, permitted or maintained on any Lot, or any part hereof, save and except those related to development, construction and sales purposes of a bona-fide Merchant Builder or the Declarant. No Owner, Member or Resident shall conduct, transmit, permit or allow any type or kind of home business or home profession or hobby on any Lot or within any Dwelling Unit which would (a) attract automobile, vehicular or pedestrian traffic to the Lot, or (b) involve lights, sounds, smells, visual effects, pollution and the like which would adversely affect the peace and tranquillity of any one or more of the Residents. The restrictions on use herein contained shall be cumulative of, and in addition to, such restrictions on usage as may from time to time be applicable under and pursuant to the Design Guidelines, Zoning Ordinance or any other statutes, rules, regulations and ordinances of the City or any other governmental authority having jurisdiction over the Community.

11.2. Minimum Floor Space . Each Dwelling Unit shall contain such minimum square feet of air-conditioned floor area (exclusive of all porches, garages or breezeways attached to the main dwelling) as may be specified or provided by the Design Guidelines.

11.3. Garages. Each single-family residential Dwelling Unit erected on any Lot shall provide garage space for a minimum of two (2) conventional automobiles, unless otherwise specifically approved by the ACC. Each Owner, Member and Resident shall use their respective best efforts to park and store their automobiles within the garage. All garage doors shall (a) be equipped with an automatic and remote controlled door opener, and (b) be closed at all times when not in use. Detached garages, guest quarters and storage rooms may be permitted under rigid circumstances if, as and when, in the absolute opinion of the ACC, the exterior surface and appearance will substantially compare with a garage and if absolutely no storage of items, which would otherwise be visible, will occur thereunder. Any and all proposed garage plans and specifications must be submitted to the ACC for review and approval. Additionally, no garage shall ever be changed, altered, reconstructed or otherwise converted for any purpose inconsistent with the garaging of automobiles unless approved in writing by the ACC.

11.4. Architectural Control and External Height Limitations. No Improvements (whether temporary or permanent), alterations, repairs, excavation, grading, landscaping or other work which in any way alters the exterior appearance of any property within the Community or the Improvements located thereon, from its natural or improved state existing on the of date this Declaration is recorded shall be made or done without the prior approval of the ACC, except as otherwise expressly provided in this Declaration. No building, fence, wall, residence or other structure shall be commenced, erected, maintained, improved, altered or made without the prior written approval of the ACC. All subsequent additions to or changes or alterations in any building, fence, wall or other structure, including exterior color scheme, and all changes in the grade of Lots, shall be subject to the prior written approval of the ACC. No changes or deviations in or from the plans and specifications once approved by the ACC shall be made without the prior written approval of the ACC. Without limiting the generality of the foregoing, the vertical height of the exterior of any Dwelling Unit or other Structure located on any South Side Lot shall not exceed 36 feet above the top back of curb, said South Side Lots being as identified on Exhibit "B" attached hereto.

11.5. Animals. No animal, bird, or fish, other than a reasonable number of generally recognized, house or yard pets, as determined solely by the Board, shall be maintained on any Lot and then only if they are kept, and raised thereon solely as domestic pets and not for commercial purposes. All pets must be kept in a fenced yard (including electric) or on a leash at all times. No animal or bird

shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of any animal or bird shall be maintained so as to be visible from neighboring property, unless otherwise approved by the ACC. If an Owner, Resident or Bona-Fide Lessee fails to abide by the rules and regulations and/or covenants applicable to pets, the Board may bar such pet from use of or travel upon the Common Properties. The Board may subject ingress, egress, use, or travel upon the Common Properties by a person with a pet to a user fee, which may be a general fee for all similarly-situated persons or a specific fee imposed for failure of an Owner, Resident or Bona-Fide Lessee to abide by the rules, regulations, and/or covenants applicable to pets. In addition, any pet which endangers the health of any Owner, Resident or Bona-Fide Lessee of a Lot or Parcel or which creates a nuisance or an unreasonable disturbance or is not a common household pet, as may be determined in the sole discretion of the Board, must be permanently removed from the Community property upon seven (7) days' written notice by the Board. Upon the written request of any Owner, Resident or Bona-Fide Lessee, the Board shall conclusively determine, in its sole and absolute subjective discretion whether for the purposes of this Section 11.5, a particular animal, fish or bird is a generally recognized house or yard pet, whether such a pet is a nuisance or whether the number of animals, fish or birds on any such property is reasonable. Any decision rendered by the Board shall be enforceable in the same manner as other restrictions contained herein.

11.6. Temporary Occupancy and Temporary Buildings. No trailer; basement of any incomplete building; tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a Residence either temporary or permanent. Temporary buildings or structures may be approved by the ACC for use during the construction of any structure on any property, but shall be removed immediately after the completion of construction.

11.7. Maintenance of Lawns and Planting. Except where otherwise provided in a Neighborhood Declaration or Supplemental Declaration, each Owner of a Lot shall keep and maintain all shrubs, trees, hedges, grass and plantings of every kind located on (i) his or her Lot (including set back areas and any applicable portions of Common Properties); (ii) any other public right-of-way or easement area which abuts the Owner's Lot and which is located between the boundary line of his or her Lot and the paved area of any street, sidewalk, bike path or similar area; and (iii) any non-street public right-of-way or easement area adjacent to his or her Lot, neatly trimmed, and shall keep all such areas properly cultivated and free of trash, weeds and other unsightly material; provided, however, that such Owner shall not be responsible for maintenance of any area over which (1) the Association assumes the responsibility in writing; (2) the Association has been given such responsibility by a Recorded instrument as provided in this Declaration; or (3) a Municipal authority assumes the responsibility. The ACC may require landscaping by the Owner of all or any portion of an improved or developed Lot including the areas described in this Section 11.7 above.

11.8. Landscaping. The following landscape criteria shall apply to all Lots, and all landscape plans shall be approved by the ACC. All Owners and Residents are required to install or cause to be installed all landscaping and irrigation based on the following schedule:

11.8.1. Front, rear, side and corner side yard landscaping shall be installed within sixty (60) days of receipt of a certificate of occupancy (or similar approval for occupancy) for the Dwelling Unit, weather permitting.

Merchant-Builders are required to offer a front yard landscape option package to Owners that meets the above minimum requirements. All front yards shall be fully landscaped and irrigated using a combination of turf grass; trees, shrubs, perennials, and groundcovers.

11.9. Nuisances: Construction Activities. No weeds, dead trees or plants, rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot or Parcel, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the Residents of such other property. No other nuisance shall be permitted to exist or operate upon any Lot or Parcel so as to be offensive or detrimental to any other property in the vicinity thereof or to its Residents. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, firecrackers, bells or other sound devices, except security devices used exclusively for security purposes, shall be located; used or placed on any such property: Normal construction activities and parking in connection with the building of Improvements on a Lot or Parcel shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots and Parcels shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials may be piled only in such areas as may be approved by the ACC. In addition, any construction equipment and building materials stored or kept on any Lot or Parcel during construction of Improvements may be kept only in areas approved by the ACC, which may also require screening of the storage areas. The ACC in its sole discretion shall have the right to determine the existence of any such nuisance.

11.10. Diseases and Insects. No Owner shall permit any thing or condition to exist upon any Lot or Parcel which shall induce, breed or harbor infectious plant diseases or noxious insects.

11.11. Repair of Improvements. No Improvement on any Lot or Parcel shall be permitted to fall into disrepair and each such Improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any Improvement is damaged or destroyed, then, subject to the approvals required by Section _ above and subject to the provisions of any Neighborhood Declaration or Supplemental Declaration, such Improvement shall be immediately repaired, rebuilt or demolished. If any Improvement should be demolished, then the Owner shall at all times maintain the vacant Lot or Parcel in a clean sightly condition, and shall clear and shall continue to clear the Lot or Parcel of any weeds, debris, garbage, trimmings or like items.

11.12. Antennas and Satellite Dishes. Antennas and satellite dishes shall be prohibited on any Lot, except (a) antennas or satellite dishes designed to receive direct broadcast satellite service which are one meter or less in diameter, (b) antennas or satellite dishes designed to receive video programming services via multipoint distribution services which are one meter or less in diameter or diagonal measurement; or (c) antennas or satellite dishes designed to receive television broadcast signals ("Permitted Devices") shall be permitted, provided that any such Permitted Device is:

11.12.1. located in the attic, crawl space, garage; or other interior spaces of the Dwelling Unit or another approved structure on the Lot or Parcel so as not to be visible from outside the Dwelling Unit or other structure;

11.12.2. located in the rear yard of the Dwelling Unit (i.e, the area between the plane formed by the front facade of the Dwelling Unit and the rear lot line) and setback from all lot lines at least fifteen (15) feet;

11.12.3. attached to or mounted on a deck or patio and extending no higher than the eaves of that portion of the roof of the Dwelling Unit directly in front of such antenna; or

11.12.4. attached to or mounted on the rear-wall of the Dwelling Unit so as to extend no higher than the eaves of the Dwelling Unit at a point directly above the position where attached or mounted to the wall.

Notwithstanding the foregoing, the Board may adopt rules establishing alternative locations and requiring screening of all Permitted Devices.

11.13. Mineral Exploration. No Lot or Parcel shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind.

11.14. Trash Containers and Collection. No garbage or trash shall be placed or kept on any Lot or Parcel, except in covered containers of a type, size and style which are approved by the ACC or required by the applicable Municipal authority. In no event shall such containers be maintained so as to be visible from neighboring property except to make the same available for collection. All rubbish, trash and garbage all be removed from the Lots and Parcels and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot or Parcel.

11.15. Clothes Drying Facilities. Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any Lot or Parcel unless they are erected, placed or maintained exclusively within a fenced service yard or otherwise concealed and shall not be visible from neighboring property.

11.16. Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot or Parcel except (i) such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction) of a building and appurtenant structures, or other Improvements; (ii) that which Declarant or the Association may require for the operation and maintenance of the Community; or (iii) that used or displayed in connection with any business permitted under a Neighborhood Declaration or Supplemental Declaration.

11.17. Signs. Except as otherwise provided in this Declaration, no sign whatsoever (including, but not limited to, commercial, political and similar sign) which are visible from neighboring property shall be erected or maintained on any Lot or Parcel except pursuant to the Design Guidelines and except:

11.17.1. Signs required by legal proceedings;

11.17.2. Not more than two (2) identification signs for individual residences, each with a surface area of seventy-two (72) square inches or less;

11.17.3. Signs (including "for sale" and "open house" signs) the nature, size, number and location of which have been approved in advance and in writing by the ACC or which comply with signage rules or guidelines adopted by the ACC.

11.17.4. Signs of Merchant Builders on any Lot or Parcel approved from time to time by Declarant as to number, size, colors, design, message content, location and type; and

11.17.5. Such other signs (including but not limited to construction job identification signs, builders signs, and subdivision) which are in conformance with the requirements of the applicable Municipal authority and which have been approved in writing by the ACC as to size, colors, design, message content and location.

11.18 Restriction on Further Community Property Restrictions and Rezoning. No Lot shall be further subdivided or separated into smaller Lots or interests by any Owner, and no portion less than all of any such Lot, nor any easement or other interest therein, shall be conveyed or transferred by any Owner, without the prior written approval of the Declarant (or the Association following the Development Period), which approval must be evidenced on the Plat or other instrument creating the subdivision, easement or other interest. This provision shall not apply to transfers of an ownership interest in the whole of any Lot. Further, this provision shall not, in any way, limit Declarant from subdividing or separating into Lots any property or Parcels at any time owned by Declarant and which has not previously been platted or subdivided into Lots. No Neighborhood Declaration, Supplemental Declaration or further covenants, conditions, restrictions or easements shall be recorded by any Owner or other person against any Lot without the provisions thereof having been first approved in writing by the Declarant or the ACC, and any covenants, conditions, restrictions or easements recorded without such approval being evidenced thereon shall be null and void. No application for rezoning of any Lot, and no applications for variances or use permits, shall be filed with a Municipal authority unless the proposed use of the Lot complies with this Declaration and any applicable Neighborhood Declaration or Supplemental Declaration.

11.19 Utility Easements. There is hereby created a blanket easement upon, across, over and under each Lot and Parcel for ingress to, egress from, and the installation, replacing, repairing and maintaining of, all utility and service lines and systems, including, but not limited to water, sewers, gas, telephones, electricity, television cable or communication lines and systems, etc., as such utilities are installed in connection with the initial development of the Lot or Parcel and the construction of the first Dwelling Unit or other Improvement thereon. Pursuant to this easement, the Declarant, its agents or contractors, or a providing utility or service company may install and maintain facilities and equipment on the property and affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of buildings on the Lots and Parcels. Notwithstanding anything to the contrary contained in this subsection, no sewers, electrical lines, water lines, or other utilities or service lines may be installed or relocated on any Lot or Parcel except as initially programmed and approved by the Declarant or the ACC.

11.20 Party Walls. Except as hereinafter provided, the rights and duties of Owners of Lots and Parcels with respect to party walls or party fences between Lots and Parcels, shall be as follows:

11.20.1 The Owners of contiguous Lots or Parcels who have an exterior party wall or exterior party fence shall both equally have the right to use such wall or fence, provided that

such use by one Owner does not interfere with the use and enjoyment of the same by the other Owner.

11.20.2 Except as provided below the cost of reasonable repair and maintenance of a party wall or a party fence shall be shared equally by the adjoining Lot or Parcel Owners.

11.20.3 In the event that any party wall or party fence is damaged or destroyed through the act or failure to act of an Owner, Bona-Fide Lessee, or Resident or any of his or her agents, guests or members of his or her family, (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner, Bona-Fide Lessee, or Resident to promptly rebuild and repair the party wall or party fence without cost to the Owner of the adjoining Lot or Parcel. Any dispute over an Owner's liability for such damage shall be resolved as provided in Section 11.20.6 below, but any liability imposed on an Owner hereunder shall not prevent the Owner from seeking indemnity therefor from the persons causing such damage.

11.20.4 In the event any party wall or party fence is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), other than by the act or failure to act of an adjoining Owner, Bona-Fide Lessee, or Resident, or his or her tenants, lessees, agents, guests or family, it shall be the obligation of all Owners whose Lots or Parcels adjoin such party wall or party fence to rebuild and repair such wall or fence at their joint expense; such expense to be allocated among the Owners in accordance with the frontage of their Lots or Parcels on the party wall or party fence.

11.20.5 Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any party wall or party fence without the prior consent of all Owners of any interest therein, whether by way of easement or in fee.

11.20.6 In the event of a dispute between Owners with respect to the construction, repair or rebuilding of a party wall or party fence, or with respect to the sharing of the cost thereof, such adjoining Owners shall submit the dispute to the Board, the decision of which shall be binding.

Anything in the foregoing to the contrary notwithstanding:

11.20.7 In the case of party fences (1) between Common Properties and Lots or Parcels, or (2) constructed by the Declarant or the Association on Common Properties within a Lot or Parcel, the Association shall be responsible for all maintenance thereof, subject to any contrary provisions of this Declaration, except that each Owner of a Lot or Parcel shall remain responsible for painting and maintaining the surface of the portion of the party fence facing his or her Lot or Parcel and or the portion thereof which is not a portion of the Common Properties; and

11.20.8 The provisions of this Section 11.20 shall not apply to any party wall which separates the interiors of two Dwelling Units. The rights of the owners of such Dwelling Units with respect to such party walls shall be governed by the Neighborhood Declaration, Supplemental Declaration or additional covenants recorded by the developer of the Dwelling Units.

11.21 Perimeter Fences and Walls. Perimeter fences or walls, as determined solely by the Declarant, shall be maintained by the Association, subject to any contrary provisions in this Declaration, except that each Owner of a Lot or Parcel shall remain responsible for painting and maintaining the surface of the portion of the perimeter wall or fence facing his or her Lot or Parcel. The Association shall be responsible for the maintenance of all landscaping outside the perimeter walls and fences, except any maintenance assumed by a Municipal authority.

11.22 Utility Service. No lines, wires or other devices for the communication or transmission of electric current or power, including telephone, television and radio signals, and cable information highways, shall be erected, placed or maintained anywhere in or upon any Lot or Parcel unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures as approved by the Declarant or the ACC, except for:

11.22.1 overhead power poles and lines to perimeter areas of the Community as approved by Declarant; and

11.22.2 boxes on the ground for electrical or communication connections, junctions; transformers and other apparatus customarily used in connection with such underground lines, wires and other devices.

11.23 Overhead Encroachments. No tree, shrub or planting of any kind on any Lot or Parcel shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way, or other area from ground level to a height of eight (8) feet without the prior approval of the ACC or the Board.

11.24 Trucks. Trailers. Campers and Boats. No motor vehicle classed by manufacturer rating as exceeding 3/4-ton, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, boat, boat trailer or other similar equipment or vehicle may be parked, maintained, constructed, reconstructed or repaired on any Lot or Parcel or on any street in the Community so as to be visible from neighboring property, or visible from the Common Properties or the streets; provided, however, the provisions of this Section 11.24 shall not apply to pickup trucks of less than 3/4-ton capacity with camper shells not exceeding seven (7) feet in height measured from ground level and mini-motor homes not exceeding seven (7) feet in height and eighteen (18) feet in length which are parked as provided in Section 11.27 below and are used on a regular and recurring basis for basic transportation.

11.25 Motor Vehicles. No automobile, motorcycle, motorbike or other motor vehicle shall be constructed, reconstructed or repaired upon any Lot, Parcel or street or other Common Properties in the Community, and no inoperable vehicle may be stored or parked on any such Lot, Parcel or street, so as to be visible from neighboring property or to be visible from Common Properties or streets; provided, however, that the provisions of this Section 11.25 shall not apply to (i) emergency vehicle repairs; (ii) temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any Improvement approved by the ACC; (iii) vehicles parked in garages on Lots or Parcels so long as such-vehicles are in good operating condition and appearance and are not under repair; and (iv) non-Commercial vehicle repair within a garage which is closed except as necessary for ingress and egress.

11.26 Parking. It is the intent of the Declarant to restrict on-street parking as much as possible. Vehicles of all Owners and Residents, and of their employees, guests and invitees, are to be, kept in

garages and residential driveways of the Owner and other designated parking areas wherever and whenever such facilities are sufficient to accommodate the number of vehicles at a Lot or Parcel; provided, however, this Section 11.26 shall not be construed to permit the parking in the above described areas of any vehicle whose parking in the Community is otherwise prohibited or the parking of any inoperable vehicle. Recreational vehicles shall be parked in covered garages except for limited periods for loading and unloading in Residential driveways or other designated parking areas as determined by the Board. Without limiting the generality of the foregoing, Residents shall not permit recreational vehicles to be used for overnight sleeping within the Community.

11.27 Roofs. No apparatus, structure or object shall be placed on the roof of a Dwelling Unit without the prior written consent of the ACC. No air conditioning units or evaporative coolers extending from windows or protruding from roofs are permitted.

11.28 Arterial Fencing and Walls. All perimeter walls and fencing along arterials (for the purposes of this Section 11.28 "arterials" shall be as designated by the Declarant) must be constructed and maintained in accordance with the specifications and regulations established by the Declarant or the ACC.

11.29 Draperies and Window Coverings. Within thirty (30) days of occupancy each Owner of a Lot or Parcel shall install permanent draperies or suitable window treatments on all exterior windows. In no event shall windows be covered with paper, aluminum foil, bed sheets or any other materials or temporary coverings not specifically intended for such purpose. No interior or exterior reflective material shall be used as a window covering unless such material has been approved by the ACC.

11.30 Drainage. No Owner or Resident shall interfere with or obstruct the drainage pattern over his or her Lot or Parcel from or to any other Lot or Parcel as that pattern may be established by Declarant.

11.31 Garage Openings. All garages shall be fully enclosed. No carports shall be permitted. No garage door shall be open except when necessary for access to and from the garage.

11.32 Right of Entry. During reasonable hours and upon reasonable notice to the Owner or other Resident or occupant of a Lot or Parcel, any member of the ACC, any member of the Board or any authorized representative of either of them; shall have the right to enter upon and inspect any Lot or Parcel, and the Improvements thereon, except for the interior portions of any completed Dwelling Unit, for the purpose of ascertaining whether or not the provisions, of this Declaration have been or are being complied with and such persons shall not be deemed guilty of trespass by reason of such entry.

11.33 Declarant's Exemption Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant or its duly authorized agents, of structures, Improvements or signs necessary or convenient to the development or sale of property within the Community.

11.34 Health Safety and Welfare. In the event additional uses, activities and facilities are deemed by the ACC to be a nuisance or to adversely affect the health, safety or welfare of Owners and Residents, the ACC may make rules restricting or regulating their presence within the Community as part of the Design Guidelines.

11.35 Model Homes. The provisions of this Declaration and of Neighborhood Declarations or Supplemental Declarations which, in certain instances, prohibit non Residential Use of Lots and Parcels and regulate parking of vehicles shall not prohibit the construction and maintenance of model homes by persons authorized by the Declarant and engaged in the construction of Dwelling Units at the Community and parking incidental to the visiting of such model homes so long as the location of such model homes and the opening and closing hours are approved by the ACC or the Declarant. The ACC or Declarant may also permit Lots and other areas to be used for parking in connection with the showing of model homes so long as such parking and parking areas are in compliance with the ordinances of the governing Municipal authority and any rules of the ACC.

11.36 Incidental Uses. The Declarant, Board or the ACC may approve uses of property within a Land Use Classification which are incidental to the full enjoyment by the Owners of the property within that Land Use Classification. Such approval may be subject to such regulations, limitations and restrictions, including termination of the use, as the Declarant or ACC may wish to impose, in its sole discretion, for the benefit of the Community as a whole. By way of example and not of limitation, the uses which the Declarant, the Board or ACC may permit are private roadways and streets within an area having a Land Use Classification of Cluster Residential Use or Condominium Development Use, intended primarily for the benefit of all or certain Owners and Residents within areas having a Land Use Classification of Cluster Residential Use, Residential Condominium Development or Single Family Residential Use; a business office for the Association within any Land Use Classification; tennis courts; and a sales, information and marketing center operated by the Declarant or its agent or representative.

11.37 Leases. Any lease between an Owner and a lessee respecting a Lot or Dwelling Unit shall be a Bona-Fide Lease and subject in all respects to the provisions of this Declaration and the Governing Documents, and any failure by the lessee to comply with the terms of this Declaration and such Governing Documents shall be a default under the lease. Specifically, all leases shall require, without limitation, that the tenant acknowledge receipt of this Declaration and a copy of the Governing Documents. All Bona-Fide Leases shall obligate the tenant to comply with the foregoing and shall provide that in the event of noncompliance, the Board, in addition to any other remedies available to it, may evict the tenant on behalf of the Owner and specifically assess all costs associated therewith against the Owner and the Owner's property. Except as may otherwise be permitted by Declarant during the Development Period, all such Bona-Fide Leases shall be in writing and shall have a minimum term of one (1) year.

11.38 Tree Removal. No trees shall be removed, except for (a) diseased or dead trees; and (b) trees which must be removed to promote the growth of other trees or for safety reasons, unless approved by the ACC.

11.39 Nondisturbance Areas. Certain areas at the Community possess great natural beauty and shall be designated as "Nondisturbance Areas" at the Declarant's sole discretion, as such areas may be identified on a Plat or other written document provided to an Owner. No Improvements (whether temporary or permanent), landscaping, alterations, repairs, excavation, grading or other work which in any way alters the exterior appearance of any Nondisturbance Area from its natural state existing on the date this Declaration is Recorded shall be made or done without the prior approval of the ACC. No building, fence, wall, Dwelling Unit or other Improvement shall be commenced, erected, maintained, improved, altered or made without the prior written approval of the ACC. All subsequent additions to or changes or alterations in any building, fence, Dwelling Unit or other Improvement, including exterior color scheme, and all changes in the grade of Nondisturbance Areas, shall be subject to the prior written

approval of the ACC. No changes or deviations in or from the plans and specifications once approved by the ACC shall be made without the prior written approval of the ACC.

11.40 Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless it is an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the ACC.

11.41 Lighting. Except for seasonal Christmas decorative lights, which may be displayed between November 15 and January 15 only, all exterior lights must be approved in accordance with this Declaration.

11.42 Violations of Law. Any activity which violates local, state, or federal laws or regulations is prohibited; however, the Board shall have no obligation to take enforcement action in the event of a violation.

11.43 Easement for Development. The Declarant hereby reserves an easement throughout the Community for the purpose of completing all Improvements contemplated by the Declarant or by this Declaration. Declarant shall be entitled to use all Common Properties within the Community, roadways within the Community and other facilities located in the Community in order to make Improvements and to continue with the development of the Community.

11.44 Sales Offices. Declarant hereby reserves the right to maintain sales offices, management offices, signs advertising the Community, and models in any areas of the Community owned by the Declarant. Declarant may relocate sales offices, management offices and models to other locations within the Community at any time.

11.45 Poles. No pole, including but not limited to a flag pole, shall be placed, constructed, or maintained on any Lot, Parcel or other part of the Community unless such pole is approved in advance by the ACC. The ACC may adopt one or more rules or regulations permitting an Owner to install and maintain a flag pole upon Owner's Lot or Parcel, provided that the location and size of such flag pole (and the number and size of any flag(s) mounted thereon) may be regulated by the ACC, and may, if so provided in such rule or regulation, be made subject to the prior approval thereof by the ACC. Nothing in this section shall be deemed to prohibit the Declarant from installing and maintaining the flag poles on, at, or adjacent to model homes within the Community. Poles to which basketball backboards, goals, and related equipment are affixed, shall also be governed by this section.

11.46 Business Activities. Property within the Community other than property owned by the Declarant, shall not be used for any business, trade, garage sale, moving sale, rummage sale, or similar activity, except that an Owner or Resident may conduct business activities within the Dwelling Unit so long as: (a) the existence or operation of the activity is not apparent or detectable by sight, sound, or smell from outside the Dwelling Unit; (b) the activity conforms to all zoning requirements for the Community; (c) the activity does not involve regular visitation of the Dwelling Unit by clients, customers, suppliers, or other business invitees or door-to-door solicitation of Residents of the project; and (d) the activity is consistent with the residential character of the project and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other Residents of the project, as may be determined in the sole discretion of the Board. This Section 11.46 shall not apply to any activity conducted by the Declarant or a Merchant Builder approved by the Declarant with respect to

its development and sale of the Lots or Parcels or its use of any Dwelling Units which it owns within the Community.

11.47 Removal of Dirt. The digging of dirt or the removal of any dirt from any Lot is hereby expressly prohibited, except as may be necessary in conjunction with landscaping or construction of Improvements. Minimum finished elevations established on the Plats shall be maintained at all times, unless a variance is secured by the Owner from the ACC.

11.48 Variances. Subject to the provisions of the Design Guidelines, the ACC may, at their option and sole discretion, grant variances from the restrictions set forth in this Declaration, including, without limitation, variances to the restrictions contained in Articles X and XI of this Declaration or in any Neighborhood Declaration or in any Supplemental Declaration, if the ACC determines in their sole discretion (a) either (i) that a restriction would create an unreasonable hardship or burden or (ii) that a change of circumstances since the date this Declaration is Recorded has rendered such restriction obsolete and (b) that the activity permitted under the variance will not have any substantial adverse affect on the Owners and Residents of the Community and is consistent with the high quality of life intended for Owners and Residents of the Community.

ARTICLE XII

REGISTRATION

12.1. Registration with the Association. In order that the Declarant and the Association can properly acquaint every Lot purchaser and every Owner, Member and Resident with these Covenants and the day-to-day matters within the Association's jurisdiction, no acquisition of any Lot within the Community shall become effective until and unless all directives by, and all obligations to, the Association and the Declarant have been properly and timely satisfied. Each and every Owner, Member and Resident shall have an affirmative duty and obligation to originally provide, and thereafter revise and update, within fifteen (15) days after a material change has occurred, various items of information to the Association, including, without limitation: (a) the full name and address of each Owner, Member and Resident; (b) the full name of each individual person who resides within the Dwelling Unit of the Lot Owner in question; (c) the business address and telephone number of each Resident; (d) the description and license plate number of each automobile owned or used by Resident and brought within the Community; (e) the name, address and telephone numbers of another local individual who can be contacted in the event Resident cannot be located in case of an emergency; and (f) such other information as may be reasonably requested from time to time by the Association. In the event any Owner, Member or Resident fails, neglects or refuses to so provide, revise and update such information, then the Association may, but is not required to, use whatever means it deems reasonable and appropriate to obtain such information and the offending Owner, Member and Resident shall become jointly and severally liable to promptly reimburse the Association for all reasonable costs and expenses incurred in so doing.

ARTICLE XIII

MORTGAGE REQUIREMENTS

13.1 Notice of Action. Upon written request made to the Association by a Mortgagee, or an insurer or governmental guarantor of a Mortgage, which written request shall identify the name and address of such Mortgagee, insurer or governmental guarantor and the Parcel, Lot number or address of the Dwelling Unit, any such Mortgagee ("Eligible Mortgagees"), insurer or governmental guarantor shall be entitled to timely written notice of:

13.1.1 Any condemnation loss or any casualty loss which affects a material portion of the Community or any Lot or Parcel on which there is a Mortgage held, insured or guaranteed by such Mortgagee, insurer or governmental guarantor.

13.1.2 Any delinquency in the payment of Assessments or charges owed by an Owner, whose Lot or parcel is subject to a Mortgage held, insured or guaranteed by such Mortgagee, insurer or governmental guarantor, which default remains uncured for a period of sixty (60) days;

13.1.3 Any lapse, cancellation or material modification of any insurance policy or fidelity bond or insurance maintained by the Association; and

13.1.4 Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified in Section 13.2 below or elsewhere herein.

13.2 Matters Requiring Prior Eligible Mortgagee Approval. Without limiting the generality of the definition of Eligible Mortgagees set forth in Section 13.1 above, Zions First National Bank, One South Main Street, Suite 1450, Salt Lake City, Utah 84111 ("Zions"), shall be an Eligible Mortgagee with respect to that certain Land Development Loan Trust Deed, Assignment of Rents, Security Agreement and Fixture Filing dated February 28, 2001, and recorded March 2, 2001, as Entry 20077; 2001 (the "Zions Trust Deed"). Except as provided elsewhere in this Declaration, the prior written consent of Owners entitled to vote at least sixty-seven percent (67%) of the votes of each class of Members in the Association (unless pursuant to a specific provision of this Declaration the consent of Owners entitled to vote a greater percentage of the votes in the Association is required, in which case such specific provisions shall control), and Eligible Mortgagees holding Mortgages on Lots or Parcels having at least fifty-one percent (51%) of the votes of the Lots or Parcels subject to Mortgages held by Eligible Mortgages shall be required in order to:

13.2.1 Abandon or terminate the legal status of the Community after substantial destruction or condemnation occurs. Termination of the legal status of the Community for any other reason shall require the affirmative vote or authorization of Eligible Mortgagees holding at least sixty-seven percent (67%) of the Mortgages on Lots or Parcels.

13.2.2 Amend any material provision of this Declaration, Articles, Bylaws or Plat. "Material Provisions" shall mean any provision substantially altering the following (an amendment to such documents shall not be considered material if it is for the purpose of correcting technical errors or for clarification only):

13.2.2.1 Increases in Assessments that raise the previous Annual Assessment amount by more than 40%, Assessment Liens, or the priority of Assessment Liens;

- 13.2.2.2 Reallocation of interests in the Common Properties, or rights to their use;
- 13.2.2.3 Redefinition of any Lot or Parcel boundaries encumbered by a Mortgage held by an Eligible Mortgagee (except as otherwise permitted by this Declaration);
- 13.2.2.4 Restoration or repair of the Community (after damage or partial condemnation) in a manner other than that specified in this Declaration;
- 13.2.2.5 Any provisions that expressly benefit Mortgagees, insurers, or guarantors; or
- 13.2.2.6 Any Mortgagee, insurer or governmental guarantor who receives a written request from the Association to approve additions or amendments to the Governing Documents and who fails to deliver or post to the Association a negative response within thirty (30) days shall be deemed to have approved such request, provided the written request was delivered by certified or registered mail, with a "return receipt" requested.

13.3 Availability of Documents and Financial Statements. The Association shall maintain and have current copies of the Governing Documents and other rules concerning the Community as well as its own books, records, and financial statements available for inspection by Owners or by holders, insurers, and guarantors of Mortgages that are secured by Lots or Parcels. Generally, these documents shall be available during normal business hours.

13.4 Subordination of Lien. The lien or claim against a Lot or Parcel for unpaid Assessments or charges levied by the Association pursuant to this Declaration shall be subordinate to the First Mortgage affecting such Lot or parcel, and the First Mortgagee thereunder which comes into possession of or which obtains title to the Lot or Parcel shall take the same free of such lien or claim for unpaid Assessment or, charges, but only to the extent of Assessments or charges which accrue prior to foreclosure of the First Mortgage, exercise of a power of sale available thereunder, or taking of a Deed or assignment in lieu of foreclosure. Without limiting the generality of the definition of a First Mortgage and First Mortgagee as contained in this Article XIII, Zions shall by definition be a First Mortgagee and the Zions Trust Deed shall by definition be a First Mortgage such that if Zions comes into possession or obtains title to a Lot or Parcel, it shall take the same free of the lien or claim for unpaid Assessments or charges levied by the Association pursuant to this Declaration which accrue prior to the foreclosure thereof, exercise of power of sale available thereunder or taking of a Deed or assignment in lieu of foreclosure. No assessment, charge, lien, or claim which is described in the preceding sentence as being subordinate to a First Mortgage or as not to burden a First Mortgagee which comes into possession or which obtains title shall be collected or enforced by the Association from or against a First Mortgagee, a successor in title to a First Mortgagee, or the Lot or Parcel affected or by the First Mortgage concerned.

13.5 Payment of Taxes. In the event any taxes or other charges which may or have become a lien on the Common Properties are not timely paid, any First Mortgagee or any combination of First Mortgagees may jointly or singly, pay such taxes. Any First Mortgagee which expends funds for any of such purposes shall be entitled to immediate reimbursement therefor from the Association.

13.6 Priority. No provision of this Declaration or the Articles gives or may give an Owner or any other party priority over any rights of Mortgagees pursuant to their respective Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for loss to or taking of all or any part of the Lots, Parcels or the Common Properties.

ARTICLE XIV

GENERAL PROVISIONS

14.1. Power of Attorney.

(a) Each and every Owner, Member and Resident hereby makes, constitutes and appoints the Declarant as his/her/its true and lawful attorney-in-fact, coupled with an interest and irrevocable, for him/her/its and in his/her/its name, place and stead and for his/her/its use and benefit, to do the following:

(i) to exercise, do or perform any act, right, power, duty or obligation whatsoever in connection with, arising out of, or relating to any matter whatsoever involving this Declaration and the Community;

(ii) to sign, execute, acknowledge, deliver and record any and all instruments which modify, amend, change, enlarge, contract or abandon the terms within this Declaration, or any part hereof, with such clause(s), recital(s), covenant(s), agreement(s) and restriction(s) as the Declarant shall deem necessary, proper and expedient under the circumstances and conditions as may be then existing; and

(iii) to sign, execute, acknowledge, deliver and record any and all instruments which modify, amend, change, enlarge, contract or abandon the Plat(s) of the Community, or any part thereof, as the Declarant shall deem necessary, proper or expedient under the conditions as may then be existing. Without limiting the generality of the foregoing, the Declarant may modify the Plat or file for and permit the creation of additional or new Lots, or to reconfigure existing Lots, within the Community including, without limitation, the Villa Lots, East Side Parcel and/or the Manor Homes (North Lots).

(b) The rights, powers and authority of said attorney-in-fact to exercise any and all of the rights and powers herein granted shall commence and be in full force upon recordation of this Declaration in the Records and shall remain in full force and effect thereafter until the Class B Conversion Date.

14.2. Further Development. During the Development Period, each and every Owner, Member and Resident waives, relinquishes and shall not directly or indirectly exercise any and all rights, powers or abilities, and the Association shall not devote or expend any monies or personnel, regarding the contest, objection to, challenge, dispute, obstruction, hindrance or any manner of disagreement with the proposed or actual development (including, without limitation, zoning or rezoning efforts or processes pertaining to residential uses) of any real property owned by the Declarant or by the affiliates, assignees or successors of the Declarant within the Community which is generally consistent with the scheme contemplated by this Declaration and the provisions of the Zoning Ordinance. Additionally, each and

every Owner Member and Resident of a Lot waives, relinquishes and shall not directly or indirectly exercise any and all rights, powers or abilities, and the Association shall not devote or expend any monies or personnel, regarding the contest, objection, challenge, dispute, obstruction, hindrance or any manner of disagreement with the proposed or actual development.

14.3. Duration. The Covenants of this Declaration shall run with and bind the land subject to this Declaration, and shall inure to the benefit of and be enforceable by the Association and/or the Owners of any Lot or Parcel subject to this Declaration, their respective legal representatives, heirs, devisees, personal representatives, successors and assigns, for an original fifty (50) year term expiring on the fiftieth (50th) anniversary of the date of recordation of this Declaration, after which time these Covenants shall be automatically extended for successive periods of ten (10) years unless an instrument is signed by the Owners of at least seventy-five percent (75%) of all Lots within the Community and recorded in the Records, which contains and sets forth an agreement to abolish these Covenants; provided, however, no such agreement to abolish shall be effective unless made and recorded one (1) year in advance of the effective date of such abolishment.

14.4. Amendments. The Covenants set forth herein are expressly subject to change, modification and/or deletion by means of amendment, at any time and from time to time, on the following basis:

(a) Until the Class B Conversion Date, (i) in response to any governmental or quasi-governmental guideline requisite or requirement, particularly with respect to those entities or agencies directly or indirectly involved in, or having an impact on, mortgage financing, mortgage insurance and/or reinsurance, or (ii) in respect to other amendments, the Declarant shall have the complete and unfettered right and privilege to amend, change, revise, modify or delete portions of these Covenants, and each and every Owner, Member, Bona-Fide Lessee and Resident specifically and affirmatively authorizes and empowers the Declarant, utilizing the attorney-in-fact status set forth in Section 14.1 above, to undertake, complete and consummate any and all such amendments, changes, revisions, modifications or deletions as the Declarant (in its sole and absolute discretion) shall deem reasonable and appropriate.

(b) After the Class B Conversion Date these Covenants, other than amendments of a "material nature", may be amended or changed upon the express written consent of the Board, without the approval of any Owner, Member or Resident.

(c) Amendments of a "material nature" to the Declaration must be agreed to and approved:

(i) Until the Class B Conversion Date, by the Declarant;

(ii) After the Class B Conversion Date, by Lot Owners owning at least two-thirds (2/3) of the Lots.

(d) A substantive change to any provision dealing with or governing any of the following items will be considered an amendment of a "material nature":

(i) voting rights of any Member or other approval;

(ii) increases in Annual Assessments that raise the previous Annual Assessment amount by more than twenty-five percent (25%), liens securing the payment of Assessments, or subordination of liens securing the payment of Assessments, or materially and adversely changing the method of determining the obligations in respect to Assessments, Charges or other monetary obligations which may be levied against an Owner;

(iii) material reduction of reserves for maintenance, repair, and replacement of Common Properties;

(iv) responsibility for maintenance and repairs;

(v) except as expressly permitted herein, convertibility of any Lot into Common Properties or vice versa;

(vi) expansion or contraction of the Community, annexation, or withdrawal of the property to or from the Community, except as expressly permitted by the provisions of Article II hereof;

(vii) hazard or fidelity insurance requirements;

(viii) imposition of any restrictions on an Owner's right to sell or transfer, his/her/its Lot;

(ix) restoration or repair (after a hazard damage or partial condemnation) of the Common Properties in a manner other than that specified herein;

(xi) anything that directly affects the development or operation in any material manner; or

(xiii) any action to terminate the legal status of the Community after substantial destruction or condemnation occurs or any action which materially and adversely alters the use of hazard insurance proceeds in respect to any losses to the Common Properties for any purpose other than the repair, replacement or reconstruction of the Common Properties.

(e) A substantive change to any provision dealing with or governing any of the following items will be considered as "material", subject to the condition that any proposed action of the Association purportedly covered by the following must be material and adverse:

(i) except as expressly permitted hereby, any act or omission to act seeking to abandon, partition, subdivide, encumber, sell or transfer the Common Properties which the Association owns, directly or indirectly (exclusive of the granting of easements for public utilities or for other public purposes consistent with the intended use of the Community);

(ii) any act or omission to act changing, waiving or abandoning any scheme of regulations or enforcement thereof pertaining to the design or the exterior appearance as contemplated by this Declaration and maintenance of Structures and of the Common Properties;

(iii) any act assigning any future income of the Association, including its right to receive Assessments; or

(iv) failing to maintain fire and extended coverage insurance on assets owned by the Association, as required by this Declaration.

(f) Additions or amendments to the Declaration such as the correction of a technical error or the clarification of a statement shall not be considered or construed as being "material," which amendment or amendments may be made by the Declarant or the Board. Any and all amendments shall be duly recorded in the Records.

14.5. Enforcement. Each Owner of each Lot shall be deemed, and held responsible and liable for the acts, conduct and omissions of each and every Member, Resident, Bona-Fide Lessee, guest and invitee affiliated with such Lot, and such liability and responsibility of each Owner shall be joint and several with their Member(s), Resident(s), Bona-Fide Lessee's, guests and invitees. The contract performance and payment lien covering Lots shall extend to, cover and secure the proper payment and performance of all obligations under this Declaration by each and every Member, Resident, Bona-Fide Lessee, guest and invitee affiliated with each Owner. Each Owner may, upon appropriate application to and approval by the Association, impose greater or additional restraints and restrictions on the "good standing" qualifications of any Person who occupies such Owner's Lot. Unless otherwise prohibited or modified by law, all parents shall be liable for any and all personal injuries and property damage proximately caused by the conduct of their children (under the age of 18 years) within the Community. Enforcement of these Covenants may be initiated by any proceeding at law or in equity against any Person or Persons violating or attempting to violate them, whether the relief sought is an injunction or recovery of damages, or both, or enforcement of any lien created by these Covenants; but failure by the Association or any Owner to enforce any Covenant herein contained shall in no event be deemed a waiver of the right to do so thereafter. With respect to any litigation hereunder, the prevailing party shall be entitled to recover all costs and expenses, including court costs and reasonable attorneys' fees, from the non-prevailing party.

14.6. Validation. Violation of or failure to comply with these Covenants shall not affect the validity of any mortgage, bona fide lien or other similar security instrument which may then be existing on any Lot. Invalidation of any one or more of these Covenants, or any portions thereof, by a judgment or court order shall not affect any of the other provisions or covenants herein contained, which shall remain in full force and effect. In the event any portion of these Covenants conflicts with mandatory provisions of any ordinance or regulation promulgated by the City (including, without limitation, the Zoning Ordinance), then such municipal requirement shall control.

14.7. Proposals of the Declarant. The proposals of the Declarant, as set forth in various provisions herein, to develop additional parcels of property for residential or other purposes and/or develop and/or expand the Common Properties and items of a related nature are, mere proposals and expressions of the existing good faith intentions and plans of the Declarant and shall not be deemed or construed as promises, solicitations, inducements, contractual commitments or material representations by the Declarant upon which any Person can or should rely. Nothing contained in or inferable from this Declaration shall ever be deemed to impose upon any other land owned or to be owned by the Declarant, or any related entity, any covenants, restrictions, easements or liens or to create any servitudes, negative reciprocal easements or other interests in any such land in favor of any Person other than the Declarant.

14.8. Heading. The headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation of this Declaration. Words of any gender used herein shall be held and construed to include any other gender, and words in the singular shall be held to include the plural and vice versa, unless the context requires otherwise. Examples, illustrations, scenarios and hypothetical situations mentioned herein shall not constitute an exclusive, exhaustive or limiting list of what can or cannot be done.

14.9. Notices to Member/Owner/Resident/Bona-Fide Lessee. Any notice required to be given to any Owner, Member, Resident or Bona-Fide Lessee of a Lot under the provisions of this Declaration shall be deemed to have been properly delivered when: (i) deposited in the United States Mail, postage prepaid, addressed to the last known address of the Person who appears as the Owner, Member, Bona-Fide Lessee or Resident on the records of the Association at the time of such mailing; or when (ii) delivered by hand or by messenger to the last known address of such Person within the Community; or when (iii) posted on the Association's bulletin board for at least thirty (30) consecutive calendar days.

14.10. Notices to Mortgagee. The holder(s) of a Mortgage may be furnished with written notification from the Association of any default by the respective mortgagor/Member/Owner in the performance of such mortgagor's/Member's/Owner's obligation(s) as established by this Declaration, provided that the Association has been theretofore furnished in writing, with the correct name and address of such mortgage holder(s) and a request to receive such notification and a reasonable supply of self-addressed, stamped envelopes.

14.11. Disputes. Matters of dispute or disagreement between Owners, Members, Bona-Fide Lessee or Residents with respect to interpretation or application of the provisions (excluding Article X architectural matters and issues concerning "substantial completion") of this Declaration or the Bylaws, shall be determined by the Board. Matters pertaining to Article X architectural matters and issues concerning "substantial completion" shall be determined by the Board through the Development Period, and thereafter by the ACC. These respective determinations (absent arbitrary and capricious conduct or gross negligence) shall be final and binding upon all Owners, Members, Bona-Fide Lessees and Residents.

14.12. Declarant's Rights. Any and all of the rights and obligations of the Declarant may be transferred to other persons or entities, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein. During the Development Period, no person or entity shall record any declaration of covenants, conditions and restrictions or declaration of condominium or similar instrument affecting any portion of the Community without the Declarant's written consent thereto. During the Development Period, all sales, promotional and advertising materials, all forms for deeds, contracts for sale, and other closing documents for the Community and sale of property in the Community by any Merchant Builder shall be subject to the prior written approval of the Declarant. Notwithstanding any other provision in this Declaration to the contrary, Declarant reserves for itself and its assigns the right to vary and modify the number of Dwelling Units, Lots and other such details of construction or modifications to this Declaration, so long as such variances and modifications are permitted by the applicable Zoning Ordinance and other requirements. This Section 14.12 may not be amended without the express written consent of the Declarant during the Development Period.

Witness the hand of an authorized representative of the Declarant on the acknowledgment dated below.

DECLARANT:

STONE GATE, L.C., a Utah limited liability company, by its sole Member and Manager:

C & E HOLDINGS PARTNERSHIP, a Utah general partnership, as the sole Member of Stone Gate, L.C., by its Managing General Partner

COTTONWOOD EQUITIES, LTD., a Texas limited partnership, by its general partner, Cottonwood Investments, L.C., a Texas limited liability company

By: *John L. West*
JOHN L. WEST, Managing Member

COTTONWOOD PARTNERS MANAGEMENT, LTD., a Utah limited partnership, as Manager of Stone Gate, L.C., by its following general partner

COTNET MANAGEMENT, INC., a Utah corporation

By: *John L. West*
John L. West, President

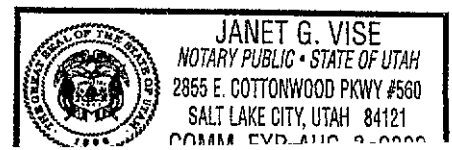
STATE OF UTAH)
) : ss
COUNTY OF SALT LAKE)

On the 31st day of May, 2001, personally appeared before me John L. West, the Managing Member of Cottonwood Partners Investments, L.C., and the President of CotNet Management, Inc., the signor of the foregoing instrument, who duly acknowledged to me that he executed the same.

My Commission Expires:

8/3/02

Janet G. Vise
Notary



CONSENT TO RECORD AND SUBORDINATION

The undersigned, Zions First National Bank, N.A. ("Lender") is the holder of the following Trust Deed:

Land Development Loan Trust Deed, Assignment of Rents, Security Agreement and Fixture Filing dated February 28, 2001, and recorded March 2, 2001, as Entry 20077, 2001.

Together with related loan documents (collectively "Loan Documents") which constitute liens of record against the Community subject to the foregoing Declaration. Lender hereby subordinates the liens and encumbrances of the Loan Documents to this Declaration and to the rights of the Owners as set forth in such Declaration and consents to the recordation of such Declaration.

ZIONS FIRST NATIONAL BANK, N.A.

By: Larry R. Hintze
Title: Vice President

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

On the 31 day of May, 2001, personally appeared before me Larry R. Hintze, the Vice President of Zions First National Bank, N.A., the signor of the foregoing instrument, who duly acknowledged to me that he executed the same.

My Commission Expires:

7-6-01

Terrill J. Schreiter
Notary

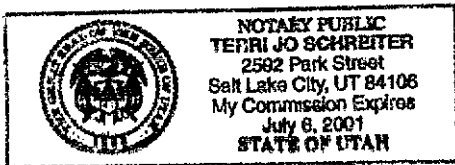


EXHIBIT "A"

STONE GATE

THE STONE GATE SUBDIVISION PROPERTY LOCATED IN
THE SE1/4 OF SECTION 13 AND THE NE1/4 OF SECTION
24, T6S, R2E, Salt Lake Base and Meridian.
PROVO, UTAH

A PORTION OF THE SOUTH 1/2 OF SECTION 13, AND THE NORTH 1/2 OF SECTION 24, TOWNSHIP 6 SOUTH, RANGE 2 EAST, SALT LAKE BASE & MERIDIAN, LOCATED IN PROVO, UTAH COUNTY, UTAH. BASIS OF BEARING FOR SUBJECT PARCEL BEING NORTH 00°44'19" WEST 2661.34 FEET (MEASURED) ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 13. SUBJECT PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST RIGHT OF WAY LINE OF UNIVERSITY AVENUE (HWY 189), SAID POINT BEING NORTH 00°44'19" WEST, 699.89 FEET ALONG THE SECTION LINE, AND SOUTH 87°50'28" WEST, 346.62 FEET FROM THE SOUTHEAST CORNER OF SECTION 13, TOWNSHIP 6 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN THENCE SOUTH 88°59'12" WEST 392.05 FEET; THENCE SOUTH 407.27 FEET; THENCE EAST 61.42 FEET TO AN EXISTING FENCE LINE, SAID POINT ON THE FENCE LINE DETERMINED IN A QUIET TITLE ACTION (ENTRY 73475, BOOK 5131, PAGE 745) JUNE 24, 1999; THENCE SOUTHERLY ALONG THE FENCE ACCORDING TO THE ABOVE QUIET TITLE ACTION THE FOLLOWING 6 COURSES: (1) SOUTH 00°40'43" WEST 94.32 FEET; (2) SOUTH 00°27'14" WEST 156.53 FEET; (3) SOUTH 00°43'55" EAST 51.66 FEET; (4) SOUTH 00°11'13" WEST 193.11 FEET; (5) SOUTH 00°18'30" WEST 144.00 FEET; (6) SOUTH 00°44'43" EAST 53.40 FEET; THENCE EAST 1.93 FEET; THENCE SOUTH 49.53 FEET TO AN OLD FENCE DESCRIBED AS "THE NORTH PROPERTY LINE OF THE CLAWSON PROPERTY MARKED BY AN OLD FENCE LINE" (ENTRY 2282, BOOK 3072, PAGE 105); THENCE ALONG THE OLD FENCE LINE NORTH 89°20'25" WEST 340.99 FEET; THENCE NORTH 06°15'33" WEST 1.38 FEET; THENCE ALONG THE NORTH BOUNDARY LINE OF MEADOW WOOD SUBDIVISION PLAT D: NORTH 87°53'53" WEST 110.13 FEET; THENCE NORTH 87°49'10" WEST 154.05 FEET ALONG MEADOW WOOD PLATS "F" AND "G"; THENCE ALONG THE NORTH BOUNDARY OF MEADOW WOOD SUBDIVISION PLATS G, E, H, AND A, NORTH 89°26'41" WEST 708.63 FEET; THENCE NORTH 89°57'40" WEST 468.53 FEET; THENCE NORTH 89°29'17" WEST 241.83 FEET; THENCE NORTH 89°29'17" WEST 73.88 FEET; TO THE APPROXIMATE CENTER OF THE PROVO RIVER THENCE NORTH ALONG THE APPROXIMATE CENTER OF THE PROVO RIVER THE FOLLOWING 7 COURSES: NORTH 270.57 FEET; THENCE NORTH 42°55'20" EAST 134.37 FEET; THENCE NORTH 55°00'00" EAST 24.19 FEET; THENCE NORTH 59°45'00" EAST 330.00 FEET; THENCE NORTH 47°00'00" EAST 670.00 FEET; THENCE NORTH 34°45'00" EAST 285.00 FEET; THENCE NORTH 09°00'00" EAST 167.07 FEET; MORE OR LESS TO THE SOUTH PROPERTY LINE OF THE PROVO CANYON BOYS SCHOOL WHICH POINT IS DISCLOSED IN AN A.L.T.A. SURVEY BY PETERSON ENGINEERING, UTAH COUNTY SURVEY PLAT 97-149 PERFORMED FOR CRESCENT R.E. FUNDING VII. L.P. AND MARKS THE SOUTH BOUNDARY LINE OF THE ABOVE BOY'S SCHOOL THENCE LEAVING SAID PROVO RIVER AND PROCEEDING RECORD BEARINGS AND DISTANCES ALONG AN EXISTING CHAINLINK FENCE LINE, SAID FENCE LINE MARKING A BOUNDARY LINE AGREEMENT AS RECORDED WITH THE UTAH COUNTY RECORDER AS ENTRY 32109 BOOK 3153 PAGE 25 DATED MAY 21, 1993 ALSO ENTRY 32108 BOOK 3153 PAGE 24 DATED MAY 21, 1993, ENTRY 5029 BOOK 2885 PAGE 552 DATED FEB 4, 1992 AND ENTRY 38012 BOOK 1873 PAGE 454 DATED NOV. 3, 1984, SOUTH 88°06'00" EAST 40.29 FEET; THENCE SOUTH 10°10'00" WEST 9.78 FEET; THENCE SOUTH 88°58'00" EAST 135.42 FEET; THENCE NORTH 81°03'00" EAST 29.04 FEET; THENCE NORTH 85°00'00" EAST 20.98 FEET; THENCE SOUTH 89°08'00" EAST 20.78 FEET; THENCE NORTH 84°58'00" EAST 31.53 FEET; THENCE SOUTH 88°52'30" EAST 38.30 FEET; THENCE NORTH 85°35'45" EAST 100.48 FEET; THENCE NORTH 88°41'46" EAST 993.06 FEET MORE OR LESS TO A POINT ON THE WEST RIGHT-OF-WAY OF UNIVERSITY AVENUE THENCE ALONG THAT RIGHT-OF-WAY SOUTH 09°39'55" WEST 11.94 FEET TO A POINT ON A 5873.58 FOOT RADIUS CURVE TO THE LEFT, THENCE ALONG THE ARC OF SAID CURVE AND RIGHT-OF-WAY 273.35 FEET (CHORD BEARS S 08°19'47" W, 273.32 FEET) TO THE POINT OF BEGINNING

CONTAINS 2,283,422 SQ FT OR 52.42 ACRES

EXHIBIT "B"

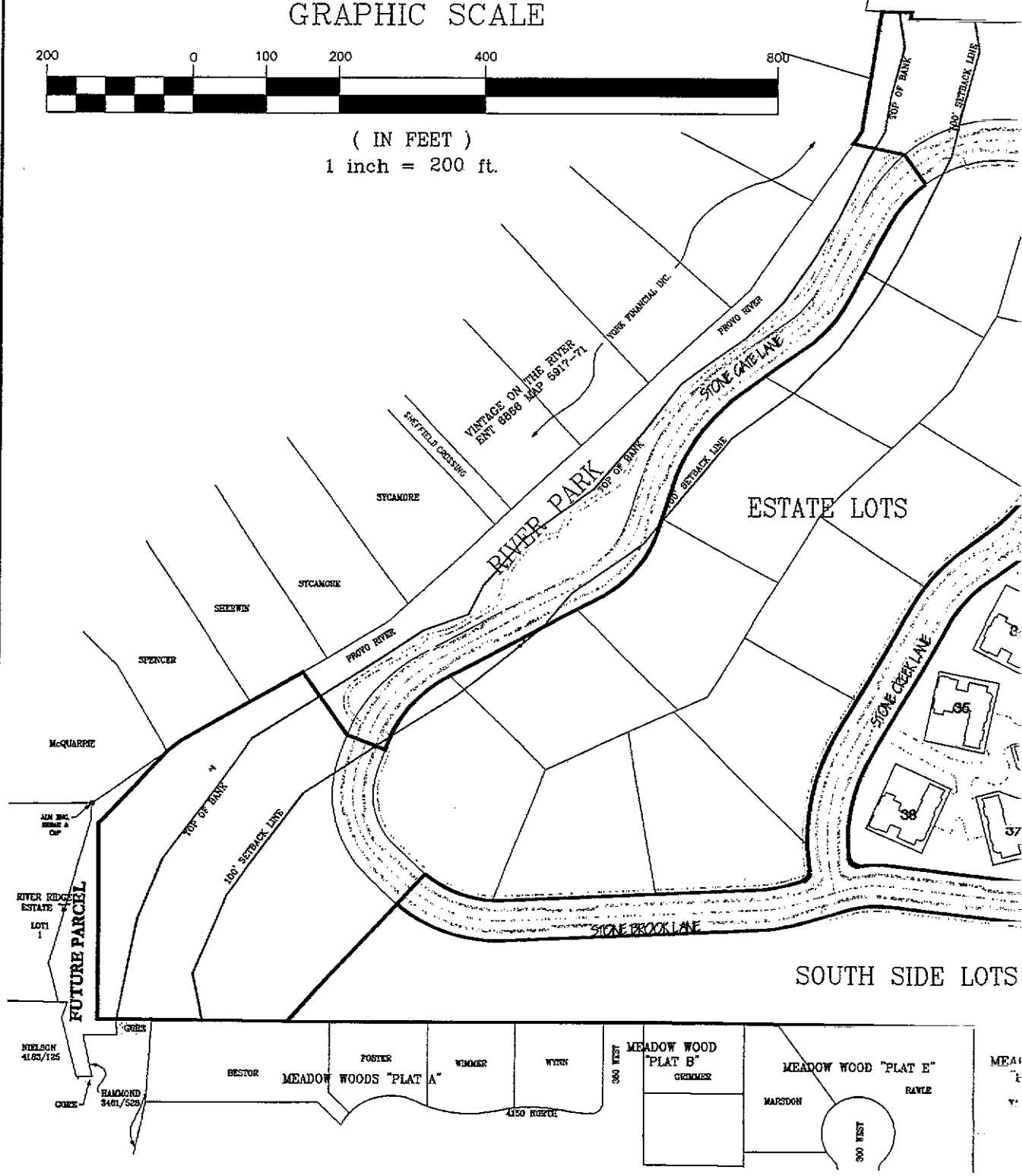




GRAPHIC SCALE

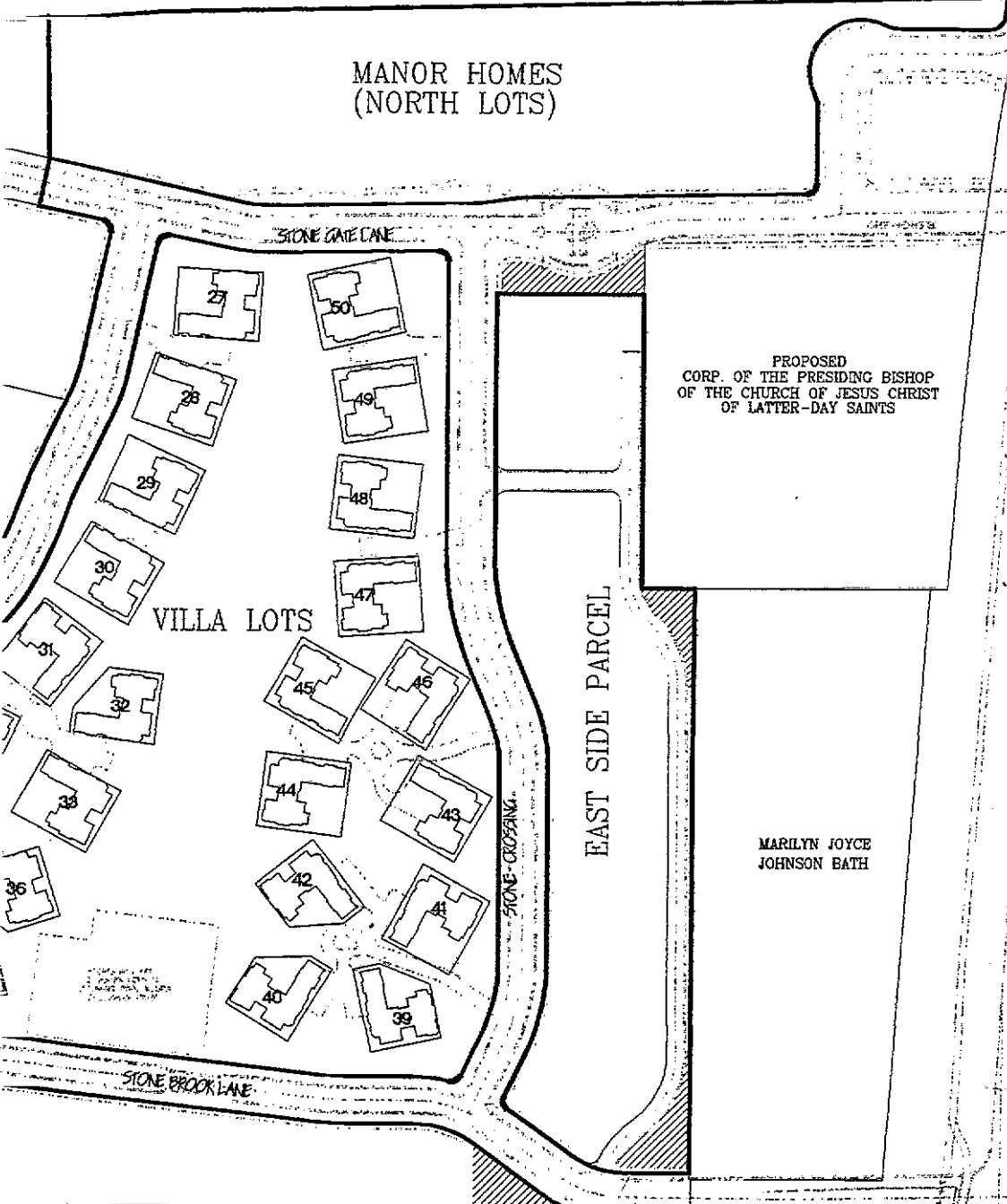


(IN FEET)
1 inch = 200 ft.



ENT 56414:2001 PG. 71 of 71

MANOR HOMES
(NORTH LOTS)



PROPOSED
CORP. OF THE PRESIDING BISHOP
OF THE CHURCH OF JESUS CHRIST
OF LATTER-DAY SAINTS

VILLA LOTS

EAST SIDE PARCEL

UNIVERSITY AVENUE
(U.S. HWY 189)

MARILYN JOYCE
JOHNSON BATH

STONE GATE
PROVO, UTAH

PSOMAS

2025 East Coliseum Parkway, Suite 120
Salt Lake City, UT 84143
(801) 978-3177 (801) 270-5782 (FAX)

REV 05-18-01
FOR DATE
SCALE 1" = 200'
DATE
8C07011700

REVISED
DATE
BY
SA

1
1

WOOD C' COVE DR.
MEADOW WOOD "PLAT F" FREDERICO
MEADOW WOOD "PLAT D" RAYMOND
28' IRRIGATION & P.U.E.
ALVIN G. & SANDRA L. CLAWSON
3072/105

4200 NORTH
EAST BAY LODGING
ASSOC, LTD., 4243/780

NOTE: EACH PLAT OF MEADOW
WOOD PLATS A,B,C,D,E & F
HAVE A 9' P.U.E. ON LOT
LINES