

WHEN RECORDED, RETURN TO:

Nathan Welch
Prime West Developers, LC
831 North 1420 East
Orem, Utah 84097

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RANDALL A. COVINGTON
UTAH COUNTY RECORDER
2000 Aug 16 12:03 pm FEE 110.00 BY SS
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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS (this "Declaration") is made this 14th day of August, 2000, by PRIME WEST DEVELOPERS, LC, a Utah limited liability company ("Declarant").

RECITALS

A. Declarant is the owner of that certain real property located in the City of Orem, County of Utah, State of Utah (the "Property") described on Exhibit "A" attached hereto and incorporated herein by this reference and depicted on a Subdivision Map recorded at the Office of the Recorder of Utah County, State of Utah.

B. Pursuant to the general plan set forth in this Declaration, Declarant has subdivided or intends to subdivide the Property into separate lots (each, a "Lot"), and intends to improve the Lots and to create a unified scheme of development.

C. In furtherance of this intent, Declarant hereby declares that all of the Property is and shall continue to be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to the limitations, covenants, conditions, restrictions, and easements set forth in this Declaration, as amended from time to time, all of which are declared and agreed to be in furtherance of a general plan established for the purpose of enhancing and perfecting the value, desirability, and attractiveness of the Property.

ARTICLE I. DEFINITIONS

As used herein, the following terms shall have the meaning set forth below :

"Articles" means the Articles of Incorporation of the Association and any amendments to the Articles that are or shall be filed with the State of Utah, Department of Commerce, Division of Corporations and Commercial Code.

"Association" means Canyon Cove Estates, Homeowners Association, Inc., a Utah nonprofit corporation.

"Board" means the Board of Directors of the Association.

"Bylaws" means the Bylaws of the Association and any amendments to the Bylaws that are or shall be adopted by the Board.

"Committee" means the Architectural Control Committee.

"Common Area" means those portions of the Development owned by the Association for the common use and enjoyment of the Owners and any other parcels designated as "Common Area" in any Supplemental Declaration recorded pursuant to the annexation provisions of Article XI of this Declaration.

"Common Facilities" shall mean all improvements, equipment, facilities and other property (real, personal, or mixed) at any time leased, acquired, owned or held by the Association for the use and benefit of the Owners. Common Facilities shall be deemed to be part of the Common Areas.

"Declarant" means Prime West Developers, LC, a Utah limited liability company, together with its successors and assigns.

"Declaration" means this Declaration and any amendments hereto.

"Development" means the Property, and any additional real property annexed to the Property pursuant to Article XI of this Declaration, together with all improvements on the Property.

"First Mortgage" means a Mortgage that has priority over all other Mortgages or deeds of trust encumbering the same Lot or other portion of the Development.

"First Mortgagee" means the holder of a First Mortgage.

"Governing Instruments" means this Declaration, the Articles and Bylaws of the Association, and any Rules and Regulations promulgated by the Board.

"House" means a single family dwelling constructed on a Lot.

"Lot" means any plot of land or parcel in the Development that is not a part of the Common Area, as shown on any recorded Subdivision Map for the Development or any Supplemental Declaration recorded pursuant to this Declaration.

"Manager" means any person or entity appointed by the Board to manage the Development.

"Member" means every person or entity entitled to membership in the Association as provided in this Declaration.

"Mortgage" means a mortgage or deed of trust encumbering a Lot or any other portion of the Development.

"Mortgagee" means a Person to whom a Mortgage is made and includes the beneficiary of a deed of trust and any guarantor or insurer of a mortgage. "Institutional Mortgagee" means a mortgagee that is a financial intermediary or depository, such as a bank, savings and loan, or mortgage company, that is chartered under federal or state law and that lends money on the security of real property or invests in such loans or any insurance company or governmental agency or instrumentality, including the federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), and the Government National Mortgage Association (GNMA).

"Mortgagor" means a Person who mortgages his, her or its property to another (i.e. the maker of the mortgage), and shall include the trustor under a deed of trust.

"Owner" means the holder or holders of record of fee title to a Lot, including Declarant, and any contract sellers under recorded contracts of sale. "Owner" shall not include any persons or entities who hold an interest in a Lot merely as security for performance of an obligation.

"Planter Strip" means the eight-foot strip of land between the road and the sidewalk.

"Rules and Regulations" means any Rules and Regulations regulating the use of the Common Area and the Lots promulgated by the Board.

"Subdivision Map" means the recorded map described in the Recitals and any subdivision map recorded in connection with the annexation of additional real property pursuant to this Declaration.

ARTICLE 11. THE PROPERTY

Section 2.01. Property Subject to Declaration. The Declarant, as record fee simple Owner of the Property, hereby submits the Property to the provisions of this Declaration and to the covenants, conditions, restrictions and reservations set forth herein.

Section 2.02. Annexation of Additional Property. Additional property may be annexed to the Development, but only as provided in this Declaration.

Section 2.03. Title to Common Areas. Upon filing Articles of Incorporation for the Association, Declarant or its successors or assigns shall convey to the Association fee title to and control of the Common Area, free of all liens except current real property taxes and any reservations, easements, covenants, encumbrances, conditions, and restrictions of record, and those contained in this Declaration.

Section 2.04. Use and Enjoyment of Common Area. The following provisions govern the use and enjoyment of the Common Area.

- (a) No Partition. The Common Areas shall be owned by the Association, and no Owner may bring any action for partition thereof.

- (b) Easement of Enjoyment. Each Member shall have the right and easement of use and enjoyment in and to the Common Areas. Such right and easement shall be appurtenant to and shall pass with title to each Lot. Any Member may delegate the right and easement use and enjoyment granted by this section to any family members, household guests, tenants, purchasers under contract, or other person who resides on the Member's Lot.
- (c) Limitation on Easement. A Member's right and easement of use and enjoyment concerning the Common Areas shall be subject to the following:
- (1) The right of the Association to promulgate and enforce Rules and Regulations for the Common Area.
 - (2) The right of the Association to suspend a Member's voting rights in the Association and a Member's right to use the recreational portions of the Common Areas for any period during which (i) an assessment on that Member's Lot remains unpaid; (ii) for a period not exceeding sixty (60) days for any infraction by such Member of the provisions of this Declaration or of any rule or regulation promulgated by the Association; and (iii) for successive sixty (60) day periods if any such infraction is not corrected during any prior sixty (60) day suspension period;
 - (3) The right of the Association to impose reasonable limitations on the number of guests per Member who at any given time are permitted to use the Common Areas;
 - (4) The right of the Association to cause the construction of additional improvements in the Common Area, or to cause the alteration or removal of existing improvements in the Common Area.
 - (5) The right of the Association to grant, consent to, or join in the grant or conveyance of easements, licenses, or rights-of-way in, on, or over the Common Area or to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Association.
 - (6) The rights of Declarant as described in this Declaration.
 - (7) The right of Orem City, Utah County, and any other governmental or quasi-governmental body having jurisdiction over the Property to access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the Property for purposes of providing police and fire protection, transporting school children; and providing other governmental or municipal service.

- (d) Easement for Maintenance, Cleaning and Repair. Some of the Common Areas are or may be conveniently accessible only through the Lots. The Association shall have the irrevocable right to have access to each Lot and to all Common Areas from time to time during such reasonable hours as may be necessary for the maintenance, cleaning, repair (emergency or otherwise) or replacement of any Common Areas, the Common Facilities, or to any Lot. In addition, agents of the Association may enter any Lot when necessary in connection with any maintenance, repair, replacement, landscaping, construction or reconstruction for which the Association is responsible. Such entry shall be made with as little inconvenience to the Owners as practicable, and any damage caused thereby shall be repaired by the Association with funds from the Common Expense Fund.
- (e) Association's Right to Use Common Areas. The Association shall have an easement to make such use of the Common Areas as may be necessary or convenient to perform the duties and functions that it is obligated or permitted to perform pursuant to this Declaration.
- (f) Easement for Completion of Project. The Declarant shall have a transferable easement over and on the Common Areas for the purpose of doing all things necessary or appropriate to complete construction of the Project and to make improvements as shown on the Plat. To the extent that damage is inflicted on any part of the Project by any person utilizing this easement, the Declarant and the person causing the damage shall be liable to the Association for the prompt repair of such damage.
- (g) Third Party Easements. The Association may grant to third parties easements in, on, and over the Common Area for the purpose of constructing, installing, or maintaining necessary utilities and services, and each Owner, in accepting his or her deed to the Lot, expressly consents to these easements. However, no such easement shall be granted if it would materially and unreasonably interfere with any Owner's use, occupancy, or enjoyment of his or her Lot.
- (h) Right to Delegate. A Class A Owner who has sold his or her Lot to a contract purchaser or who has leased or rented the Lot shall be entitled to delegate his or her rights to use and enjoy the Common Area to any contract purchaser, tenant, or subtenant who resides in the Owner's Lot, subject to reasonable regulation by the Board. If the Owner makes such a delegation of rights, the Owner and the Owner's family, guests, employees, and invitees shall not be entitled to use and enjoy the Common Area for so long as the delegation remains effective.
- (i) Damage. Each Owner shall be liable to the Association for any damage to the Common Area or Common Facilities, to the extent that the damage is not covered by insurance, if the damage is sustained because of the negligence, willful misconduct, or unauthorized or improper installment or maintenance of any improvement by the Owner or the Owner's family guests, tenants, contract purchasers or invitees. In the case of joint ownership of a Lot, the liability of the

co-owners shall be joint and several, unless the co-owners and the Association have agreed in writing to an alternative allocation of liability.

ARTICLE III. OWNERS' ASSOCIATION

Section 3.01. Organization of the Association. The Association is or shall be incorporated under the name of Canyon Cove Estates Homeowners Association, Inc., as a nonprofit corporation organized under the Utah Nonprofit Corporation and Co-operative Association Act. From the closing of the escrow for the first sale of a Lot, the Association shall be charged with the duties and invested with the powers prescribed by law and set forth in this Declaration, the Articles and the Bylaws.

Section 3.02. Membership. Each Lot shall be entitled to one membership in the Project. If title to a Lot is held by more than one person, the membership appurtenant to that Lot shall be shared by all such persons in the same proportionate interest and by the same type of tenancy in which title to the Lot is held. Each Owner shall be entitled and required to be a member of the Association; each membership shall be appurtenant to the Lot to which it relates and shall be transferred automatically by conveyance of that Lot. No person or entity other than an Owner may be a member of the Association, and membership in the Association may not be transferred except in connection with the transfer of a Lot. Membership will begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner.

Section 3.03. Voting Classes. The Association shall have two classes of voting membership as follows:

- (a) Class A: Class A memberships shall be all memberships except the Class B memberships held by the Declarant and each Owner shall be entitled to one (1) Class A membership for each Lot that Owner owns.
- (b) Class B: The Class B memberships shall be held only by the Declarant. The Declarant shall be entitled to one (1) Class B membership for each Lot owned by the Declarant.

Section 3.04. Voting Rights. All voting rights of the Owners shall be subject to the following restrictions, limitations, and requirements:

- (a) Number of Votes Per Membership Class. The Declarant shall be entitled to three (3) votes for each Class B membership it holds. Each other Owner shall be entitled to one (1) vote for each Class A membership held by that Owner, subject to the authority of the Board to suspend the voting rights of the Owner for violations of this Declaration in accordance with the provisions hereof.
- (b) Multiple Owners of One Lot. If a particular Lot is owned by more than one owner, the vote relating to that Lot shall be exercised as such owners may

determined among themselves. No Lot shall be entitled to more votes than described in subsection (a) above, regardless of the number of persons having an ownership interest in the Lot. A vote cast at any Association meeting by any of such owners, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the Lot concerned unless an objection is immediately made by another owner of the same Lot. In the event such an objection is made, the vote of that Lot shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

- (c) Termination of Class B Memberships. The Class B memberships shall cease and be converted to Class A memberships, on the basis of the number of Lots owned by the Declarant, when the total votes outstanding in the Class A memberships equal the total votes outstanding in the Class B memberships, or five (5) years from the date of the recording of this Declaration, whichever is soonest.

Section 3.05. Membership Meetings. Meetings of the Members shall be noticed and governed in accordance with the Bylaws.

Section 3.06. General Powers and Authority. The Association shall have all the powers of a nonprofit corporation organized under the Utah Nonprofit Corporation and Co-operative Association Act, subject to any limitations set forth in this Declaration or in the Articles and Bylaws of the Association. It may perform all acts that may be necessary for or incidental to the performance of the obligations and duties imposed upon it by this Declaration or the other Governing Instruments. Its powers shall include, but are not limited to, the following:

- (d) The power to establish, fix, levy, collect and enforce the payment of assessments against the Owners in accordance with the procedures set forth in Article IV of this Declaration.
- (e) The power to adopt reasonable Rules and Regulations governing the use of the Common Area and its facilities, and of any other property owned by the Association. These Rules and Regulations may include, but are not limited to: reasonable restrictions on use by the Owners and their family, guest, employees, tenants, and invitees; rules of conduct; and the setting of reasonable fees for the use of recreational facilities. A copy of the current Rules and Regulations, if any, shall be given to each Owner and shall be posted at conspicuous places in the Common Area. If any provision of the Rules and Regulations conflicts with any provision of this Declaration, the Articles, or the Bylaws, the Declaration, Articles, or Bylaws shall control to the extent of the inconsistency.
- (f) The power to institute, defend, settle, intervene in litigation, arbitration, mediation, or administrative proceedings in its own name as the real party in interest and without joining with it the Owners, in matters pertaining to the following:

- (1) Enforcement of this Declaration, the Articles, Bylaws, and Rules and Regulations;
- (2) Damage to the Common Area;
- (3) Damage to any Lot that arises out of, or is integrally related to, damage to the Common Area that the Association is obligated to maintain or repair.

The Association shall enforce payment of assessments in accordance with the provisions of Article IV of this Declaration.

- (g) The power to discipline its Owners for violation of any of the provisions of the Governing Instruments by suspending the violator's voting rights and privileges for use of the Common Area, or by imposing momentary penalties, subject to the following limitations:
- (1) The accused Owner shall be given notice and an opportunity to be heard with respect to the alleged violations.
 - (2) Any suspension of an Owner's Association privileges shall not exceed sixty (60) days for each violation.
 - (3) Any monetary penalty shall not exceed Five Hundred Dollars (\$500.00) for each violation.
 - (4) Except as provided in Article IV of this Declaration, relating to foreclosure for failure to pay assessments, or as a result of the judgment of a court or a decision arising out of arbitration, the Association shall in no way abridge the right of any Owner to the full use and enjoyment of his or her Lot.
- (e) The power to delegate its authority, duties, and responsibilities to its officers, employees, committees, or agents, including a professional management agent. The term of any agreement with a manager or the Declarant for the furnishing of maintenance, repair, and related services shall not exceed one (1) year, renewable by agreement of the parties for successive one-year periods. Such an agreement shall be terminable by either party (i) for cause on thirty (30) days written notice and (ii) without cause or the payment of a termination fee on ninety (90) days written notice.

Section 3.07. Duties of the Association. In addition to the duties delegated to the Association or its agents and employees elsewhere in the Governing Instruments, the Association shall be responsible for the following:

- (a) Compliance. The administration of the Development shall be in accordance with the provisions of the Governing Instruments.

- (b) The Common Areas. The Board, acting on behalf of the Association and, subject to the rights and duties of the Owners as set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Areas and all improvements thereon (including the Common Facilities) and shall keep the same in a good, clean, attractive, safe and sanitary condition, order and repair. All goods and services procured by the Board in performing its responsibilities under this section shall be paid for with funds from the Common Expense Fund.
- (c) Miscellaneous Goods and Services. The Board may, on behalf of the Association, obtain and pay for such services, including legal and accounting services, as the Board shall determine to be necessary or desirable for the proper operation of the Development or the enforcement of this Declaration.
- (d) Real and Personal Property. The Board may acquire and hold on behalf of the Association real, personal and mixed property of all types for the use or benefit of all of the Owners and may dispose of such property by sale or otherwise, provided that (i) any sale or other disposition of any real, personal or mixed property by the Board wherein the value of such property exceeds Five Thousand Dollars (\$5,000); or (ii) any purchase of any real, personal or mixed property by the Board of Trustees for an amount in excess of One Hundred Thousand Dollars (\$100,000) must be approved by a vote of seventy-five percent (75%) of the votes held by Members, either by written ballot or at a meeting duly called for that purpose. The cost of all such property, including Common Facilities, shall be paid for out of the Common Expense Fund and all proceeds from the disposition thereof shall be part of such fund.
- (e) Rules and Regulations. The Board may make reasonable rules and regulations governing the use of the Lots, the Common Areas, and all parts of the Development, which rules and regulations shall be consistent with the rights and duties established by this Declaration.
- (f) Granting Easements. The Board may, without the vote or consent of the Owners or of any other person, grant or create, on such terms as it deems advisable, permits, easements, licenses and rights-of-way over, under, across and through the Common Areas for utilities and other purposes reasonably necessary or useful for the proper maintenance or operation of the Development.
- (g) Implied Rights. The Association may exercise any right, power or privilege given expressly by this Declaration or by law, and every other right or privilege reasonably implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.
- (h) Power of Attorney and Amendments. Each Owner makes, constitutes and appoints the Association its true and lawful attorney in its name, place and stead to make, execute, sign, acknowledge and file with respect to the Declaration, such

amendments to this Declaration and the Subdivision Map as may be required by law or by vote taken pursuant to the provisions of this Declaration.

- (i) Financial Disclosures. Within one hundred twenty (120) days after the close of each fiscal year, the Association shall prepare and distribute to the Owners an annual report consisting of the following:
- (1) A balance sheet as of the end of the fiscal year.
 - (2) An operating (income) statement for the fiscal year.
 - (3) A statement of change in financial position for the fiscal year.
 - (4) For any fiscal year in which the gross income to the Association exceeds Seventy-Five Thousand Dollars (\$75,000), a copy of the review of the annual report prepared in accordance with generally accepted accounting principals by a Certified Public Accountant.
- (j) First Accounting Date. The Association shall prepare a balance sheet, as of an accounting date that is the last day of the quarter closest in time to six (6) months from the date of closing of the first sale of a Lot in the Development, and an operating statement for the period from the date of the first closing to the foregoing accounting date. The Association shall distribute this statement to the Owners within sixty (60) days after the accounting date. This operating statement shall include a schedule of assessments received and receivable identified by the number of the Lot and the name of the Owner assessed.
- (k) Document Requests. The Association shall provide any Owner with the following documents within ten (10) working days of the mailing or delivery of a written request therefor:
- (1) A copy of the Governing Instruments.
 - (2) A copy of the most recent financial statement distributed pursuant to Section 3.07 (i) of this Declaration.
 - (3) A written statement from an authorized representative of the Association specifying (i) the amount of any assessments levied on the Owner's Lot that are unpaid on the date of the statement; and (ii) the amount of late charges, interest, and costs of collection that, as of the date of the statement, are or may be made a lien on the Owner's Lot pursuant to Section 4.08 of this Declaration. The Association may charge the Owner a reasonable fee to cover its cost to prepare and reproduce those requested items.

- (l) Property Taxes. The Association shall pay all real and personal property taxes and assessments levied against it, its personal property, and the Common Area.

Section 3.08. Board of Directors. The affairs of the Association shall be managed and its duties and obligations performed by an elected Board of Directors, in accordance with the Bylaws.

ARTICLE IV. ASSESSMENTS AND COLLECTION PROCEDURES

Section 4.01. Agreement to Pay Assessments. The Declarant for each Lot owned by it within the Development and each Owner of any Lot by the acceptance of instruments of conveyance and transfer therefor, whether it be so expressed in said instruments, shall be deemed to covenant and agree with each other and with the Association to pay to the Association all assessments made by the Association for the purposes provided in this Declaration. Such assessments shall be fixed, established and collected from time to time as provided in this Article.

Section 4.02. Annual Assessments. Annual assessments shall be computed and assessed against all Lots in the Project as follows:

- (a) Common 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 Areas. Such estimated expenses may include, without limitation, the following: Expenses of management; 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 replacement of those Common Facilities 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 Owners under or by reason of this Declaration. Such shall constitute the Common Expense, and all funds received from assessments under this Section shall be part of the Common 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 Common Expense Fund.
- (b) Apportionment. Common Expenses shall be apportioned among, and assessed to, all Lots and their Owners equally. The Declarant shall be liable for the amount of any assessments against Lots owned by it.
- (c) Annual Budget. Annual assessments shall be determined on the basis of a fiscal year beginning January 1 and ending December 31 of the same calendar year, provided the first fiscal year shall begin on the date of this Declaration, and, on or

before December 1 of each year thereafter, the Board shall prepare and furnish to each Owner, or cause to be prepared and furnished to each Owner, an operating budget for the upcoming fiscal year (the "Budget"). The Budget shall itemize the estimated Common Expenses for such fiscal year, anticipated receipts (if any) and any deficit or surplus from the prior operating period. The Budget shall serve as the supporting document for the annual assessment for the upcoming fiscal year and as the major guideline under which the Development shall be operated during such annual period.

- (d) Notice and Payment. Except with respect to the first fiscal year, the Board shall notify each Owner in writing as to the amount of the annual assessment against its Lot on or before December 1 each year for the fiscal year beginning on January 1 of the following calendar year. Except as otherwise provided by the Board, each annual assessment shall be payable in two equal installments, one such installment due on the first day of the first full calendar month following the date of the notice of annual assessment, and the second installment due on July 1 of the same year.
- (e) Inadequate Funds. In the event that the Common Expense Fund proves inadequate at any time for whatever reason, including nonpayment of any Owner's assessment, the Board may, on behalf of the Association, levy additional assessments in accordance with the procedure set forth for levying special assessments, except that the vote therein specified shall be unnecessary.

Section 4.03. Special Assessments. In addition to the annual assessments authorized by this Article, the Board, on behalf of the Association, may levy, at any time and from time to time, on the conditions set forth below, special assessments, payable over such periods as the Board may determine, for the purpose of paying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of all or any portion of the Common Areas, or for any other expenses incurred or to be incurred as provided in this Declaration (including, without limitation, Common Expenses).

- (a) Vote Required. Any special assessment shall require the affirmative vote of two-thirds (2/3) of the combined votes of both classes of Members who are voting in person or by proxy at a meeting called for such purpose. Notice of the meeting shall be sent to all Members no less than thirty (30) nor more than sixty (60) days before the meeting.
- (b) Quorum. At any special assessment meeting, the presence of Members, in person or by proxy, entitled to cast sixty percent (60%) of all the votes (exclusive of suspended voting rights) of Members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at the subsequent meeting shall be Members entitled to cast thirty percent (30%) of all the votes (exclusive of suspended voting rights) of the Members.

Section 4.04. Limitations on Assessments. Except for emergency situations, the Board may not, without the approval of Owners constituting a majority of the Owners of the Association and casting a majority of the votes at a meeting or election of the Association, impose a regular annual assessment per Lot that is more than twenty percent (20%) greater than the regular annual assessment for the preceding year, or levy special assessments that in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that year. These limitations shall not apply to assessment increases that are necessary for emergency situations. An emergency situation is an extraordinary expense that is:

- (a) Required by a court order;
- (b) Necessary to repair or maintain the Development or any part of it for which the Association is responsible when a threat to personal safety in the Development is discovered; or
- (c) Necessary to repair or maintain the Development or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the Budget.

Before the Board may impose or collect an assessment in an emergency situation, it shall pass a resolution containing written findings as to the necessity of the extraordinary expense and why the expense was not or could not have been reasonably foreseen in the budgeting process, and shall distribute the resolution to the Owners with the notice of assessment.

Section 4.05. Commencement of Assessments. Regular assessments shall commence on all Lots in the Development on the first day of the month following the first conveyance of a Lot in the Development.

Section 4.06. Late Charges. Late charges may be levied by the Association against an Owner for the delinquent payment of regular or special assessments. If an assessment is delinquent, the Association may recover all of the following from the owner:

- (a) Reasonable costs incurred in collecting the delinquent assessment, including reasonable attorney's fees.
- (b) A late charge not exceeding ten percent (10%) of the delinquent assessment or Ten Dollars (\$10), whichever is greater.
- (c) Interest on the foregoing sums, at an annual percentage rate of eighteen percent (18%), commencing thirty (30) days after the assessment becomes due.

No late charge may be imposed more than once for the delinquency of the same payment. However, the imposition of a late charge on any delinquent payment shall not eliminate or supersede charges imposed on prior delinquent payments.

Section 4.07. Not an Independent Source of Authority. This Article shall not be construed as an independent source of authority for the Association to incur expenses but shall be construed to prescribe the manner of assessing for expenses authorized by other sections or articles of this Declaration. Special assessments shall be apportioned among and assessed to the Lots and their Owners equally. Notice in writing of the amount of each special assessment and the time by which payment is due shall be given promptly to the Owners; no payment shall be due less than thirty (30) days after such notice shall have been given. All unpaid portions of any special assessment shall bear interest at the rate established by the Board not to exceed eighteen percent (18%) per annum from the date such portions become due until paid. All funds received from assessments under this section shall be part of the Common Expense Fund.

Section 4.08. Lien for Assessment. All sums assessed to Owners of any Lot within the Development pursuant to the provisions of this Article, together with late charges and interest thereon as provided herein, shall be secured by a lien on such Lot in favor of the Association. To evidence such a lien, the Board may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the Lot and a description of the Lot. Such a notice shall be signed and acknowledged by a duly authorized officer of the association and may be recorded in the office of the County Recorder of Utah County, State of Utah. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by sale or foreclosure conducted in accordance with the provisions of law applicable to the exercise of powers of sale or judicial foreclosure of deeds of trust or mortgages or in any other manner permitted by law. In any exercise of a power of sale remedy, the Association may appoint its attorney or any title insurance company to act as the trustee in connection with such sale and said trustee shall have all of the rights and powers necessary to convey title to the Lot to the purchaser at any foreclosure sale. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees), and such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any assessments against the Lot which shall become due during the period of foreclosure, and all such assessments shall be secured by the lien being foreclosed. The Board shall have the right and power on behalf of the Association to bid in at any foreclosure sale and to hold, lease, mortgage or convey the subject Lot in the name of the Association.

Section 4.09. Personal Obligation of Owner. The amount of any annual or special assessment against any Lot shall be the personal obligation of the Owner of such Lot. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving the lien securing the obligation. No Owner may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the Common Areas or by abandonment of its Lot or by waiving any services or amenities provided for in this Declaration. In the event of any suit to recover a money judgment of unpaid assessments hereunder, the defaulting Owner shall pay the costs and expenses incurred by the Association in connection therewith, including reasonable attorneys' fees.

Section 4.10. Personal Liability of Purchaser. The personal obligation of an Owner to pay unpaid assessments against its Lot shall not pass to successors in title unless assumed by them. However, a lien to secure unpaid assessments shall not be affected by the sale or transfer

of the Lot unless by foreclosure of a First Mortgage recorded before the delinquent assessment was due, in which case the foreclosure will extinguish the lien for any assessments that were payable before the foreclosure sale, but shall not relieve any subsequent Owner from paying further assessments.

Section 4.11. Reserve Fund. The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of all or any portion of the Common Areas the Association may be obligated to maintain, repair or replace. The reserve fund shall be maintained out of regular assessments for Common Expenses.

Section 4.12. Evidence of Payment of Annual and Special Assessments. Upon receipt of a written request by an Owner or any other person, the Association within a reasonable period of time thereafter shall issue to such Owner or other person a written certificate stating (a) that all annual and special assessments (including interest, costs and attorneys' fees, if any) have been paid with respect to any specified Lot as of the date of such certificate, or (b) if all annual and special assessments have not been paid, the amount of such annual and special assessments (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 in question.

ARTICLE V. USE RESTRICTIONS AND COVENANTS

Section 5.01. General Restrictions on Use. In exercising the right to occupy or use a Lot or the Common Area and its improvements, the Owner and the Owner's family, guests, employees, tenants, and invitees shall not:

- (a) Further subdivide a Lot.
- (b) Occupy or use a Lot, or permit all or any part of a Lot to be occupied or used, for any purpose other than as a private single family dwelling. Nothing in this Declaration shall prevent an Owner from leasing or renting out his or her Lot, provided that it is (i) not for transient or hotel purposes, (ii) for a period of at least 180 days, and (iii) subject to the Governing Instruments.
- (c) Permit anything to obstruct the Common Area or store anything in the Common Area without the prior consent of the Board, except as otherwise provided in the governing Instruments.
- (d) Perform any act or keep anything on or in any Lot or in the Common Area that will increase the rate of insurance on the Common Area without the Board's prior written consent. Further, no Owner shall permit anything to be done or kept in his or her Lot, or in the Common Area that would result in the cancellation of

insurance on any Lot or on any part of the Common Area that would violate any law.

- (e) Conduct oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind, nor permit oil wells, tanks, tunnels, or mineral excavations or shafts upon the surface of any lot. No derrick or other structure designed for boring for water, oil or natural gas shall be erected, maintained or permitted upon any lot except by Declarant, its successors or assigns for the benefit of the Association.
- (f) Raise, breed, or keep animals, livestock or poultry of any kind on a Lot or in the Common Area, except dogs, cats, or other household pets (as defined by Orem City Ordinances), which may be kept on Lots, subject to Rules and Regulations. These animals are the responsibility of the Lot Owner and shall be restrained in a humane and sanitary manner. The animals shall not be allowed to roam the neighborhood unleashed. It is the responsibility of the Owner to clean up after his or her animal. Runs and leash areas must be kept clean and sanitary and may not be located less than 30 feet from any neighboring dwelling. No pit bulls (dogs) shall be allowed in the Development.
- (g) Engage in any noxious or offensive activity in any part of the Development.
- (h) Alter or modify the exterior of any improvements located on a Lot without first obtaining the written consent of the Committee.
- (i) Alter, construct, or remove anything on or from the Common Area, except upon the written consent of the Board.
- (j) Park any automobile or other motor vehicle in the Common Area except in designated areas.
- (k) Park any campers, trailers, boats, equipment, recreational vehicles, motor homes, or other similar vehicles on a Lot for more than forty-eight (48) consecutive hours other than in an enclosed garage or behind a residential structure (such as a fence or building) constructed on a Lot, out of view from the street. Sufficient side-yard gate access should be planned and provided for in the design of the home, to permit storage of recreational-type vehicles.
- (l) Park any campers, trailers, boats, equipment, recreational vehicles, motor homes, or other similar vehicles on the public street or right-of-way for more than forty-eight (48) consecutive hours. The Committee may enforce this provision by first giving notice in the form of a written request placed on the vehicle in question. If the vehicle in question is not removed within forty-eight (48) hours of notice, the vehicle or equipment may be towed away at the Owner's expense.

- (m) Park any campers, trailer, boats, equipment, recreational vehicles, motor homes, or other similar vehicles in the Common Area.
- (n) Allow trash, garbage, or other waste to be kept in anything other than sanitary containers. All rubbish, trash and garbage should be regularly removed from each Lot and shall not be allowed to accumulate thereon. Each owner shall acquire and utilize a trash compactor at the time of completion of each dwelling. All clotheslines, refuse containers, woodpiles, storage areas and machinery and equipment shall be prohibited upon any lot unless obscured from view of adjoining lots and streets by a fence or appropriate screen.
- (o) Erect, construct, place or permit to remain on any House or structures in the Development any television, radio, satellite dishes larger than three (3) feet in diameter, shortwave or other electronic antenna or device of any type unless and until the same be approved in writing by the Committee. Satellite dishes smaller than three (3) feet in diameter must be located on the back of the dwelling and not be visible from the street.
- (p) Permit the use of sports and/or tennis courts after 11:00 p.m.
- (q) Drive through the Development faster than the posted speed limit of twenty-five (25) miles per hour. If an Owner, or an Owner's family, guests, employees, and/or invitees poses a threat to any other Owner, Owner's family, guests, employees, and/or invitees by creating a traffic hazard, the Owner shall be fined in an amount to be determined by the Board. The intent of this provision is to ensure a safe environment for all Owners in the Development

Section 5.02. Exemption. Declarant shall be exempt from the restriction of Section 5.01 to the extent necessary to complete any construction work, sales activities, or additions to or affecting the Development. This exemption includes, but is not limited to, maintaining Lots as model homes, placing advertising signs on Development property, and generally using Lots and the Common Area to carry on construction activity.

Section 5.03. Required Trees, Mailbox Enclosures and Street Light Fixtures. Each Lot upon which a House is constructed shall have planted thereon, at the Owner's sole expense, one (1) tree, having a diameter of not less than two inches (2"), for every two thousand (2,000) square feet of gross buildable Lot area. Landscaping shall include grass, shrubs, and a variety of trees. Deciduous trees shall have a minimum diameter of two inches (2"), and evergreen trees shall not be less than four feet (4') in height. Trees planted by the Association within the planter strip shall be considered part of the total number of trees on each Lot. Each Lot upon which a House is constructed shall have constructed thereon, at the Owner's sole expense, a masonry mailbox enclosure. Each Lot shall have a decorative yard light with a photocell for automatic on and off. Said yard lights shall be located within ten to fifteen feet (10'-15') of the front sidewalk. All yard lights must be approved by the Committee prior to their actual installation. Yard lights are not the same as courtyard lights, and yard lights are not to be located in the top of the mailbox.

Section 5.04. Planter Strip. To maintain the desired aesthetic integrity of the neighborhood, the following rules shall apply to the Planter Strip:

- (a) The Owner of each Lot shall plant and maintain grass sod in the Planter Strip bordering his or her Lot in conjunction with the completion of the front-yard landscaping. No other landscaping will be permitted within the Planter Strip without the approval of the committee, with the exception of a masonry mailbox and trees to be planted by the Declarant on behalf of the Association. Failure to maintain the Planter Strip in good condition may cause the Owner to be fined in an amount to be determined by the Board.
- (b) The Owner of each Lot shall be responsible for installing a sprinkling system to water the Planter Strip in conjunction with the watering of the Lot.
- (c) The Owner of each Lot will be responsible for laying underground electrical conduit from the House to the Planter Strip in conjunction with the completion of the front-yard landscaping. The Declarant may opt to satisfy this requirement, in which case the Owner will be relieved of the responsibility.
- (d) The Association will be responsible for bearing the cost of planting and maintaining all trees within the Planter Strip, with the exception of watering. The type of tree, the location of each tree, the size of the trees, and the planting time line for the trees will be determined at the sole discretion of the Declarant. Each Owner, at the time of closing on a Lot, will be assessed by the Association a one-time fee, in the amount of One Thousand Five Hundred Dollars (\$1,500.00) per Lot, to cover the cost of purchasing and planting the trees. The cost of maintaining trees will be assessed to the Owners as part of the annual Association dues.

Section 5.05. Nuisances. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. No rubbish or debris of any kind shall be placed or permitted upon the Development, and no odors shall be permitted to arise from such rubbish or debris, which would render any part of the Development unsanitary or unsightly or which would be offensive or detrimental to any other part of the Development, or to the occupants thereof. All automobiles exposed to view from the front of a House, any other Lot, or any street or road, shall be maintained in running condition, properly licensed, and be regularly used. No commercial or industrial type vehicles shall be stored or parked on any Lot or street in the Development except during actual use for construction on a Lot or maintenance of the Development.

Section 5.06. Fencing and Safety Fencing. Each Lot upon which a residential dwelling is constructed shall have erected thereon at the Owner's sole expense a fence, to be approved by the Committee, which shall restrict children from accessing swimming pools. All fencing, whether safety fencing or otherwise, shall be constructed of wrought iron, brick, rock, wood, or a combination thereof. Chain link, barbed wire, and concertina wire are not permitted, except that

vinyl-coated chain link may be used around a recreational facility such as a tennis court or sports court, if approved by the Committee.

Section 5.07. Stoves and Fireplaces. All wood and/or coal burning stoves installed in a House shall meet or exceed pollution control standards established by the United States Environmental Protection Agency.

Section 5.08. Time Limit for Construction of Residential Dwelling. Owners shall begin construction of a House no later than twenty-four (24) months following the closing of the purchase of the Owner's Lot from the Declarant. In the event that construction has not been commenced within the specified period, the Owner may be fined in an amount not to exceed Ten Thousand Dollars (\$10,000.00), which fine shall be secured by a lien placed against the Lot by the Declarant or the Association. The Owner must obtain a certificate of occupancy for such House from the City of Orem within thirty-six (36) months following the closing of the purchase of such Owner's Lot. In the event a certificate of occupancy has not been obtained within the specified period, the Owner may be fined in an amount not to exceed Fifteen Thousand Dollars (\$15,000.00), which fine shall be secured by a lien placed against the Lot by the Association or the Declarant. An additional fine in the amount of Fifteen Thousand Dollars (\$15,000.00) will be assessed for every year thereafter in which the Owner remains in violation of this provision.

Section 5.09. Irrigation Systems. All landscape irrigation systems installed on a Lot shall contain automatic time-control devices.

Section 5.10. Off-Street Parking. Each Lot shall contain adequate parking space for two (2) standard size vehicles to be utilized by the guests and/or invitees of an Owner.

Section 5.11. Removal of Dead Trees and Debris. All dead trees and debris must be removed from a Lot, at the Owner's sole expense, prior to the issuance by the City of Orem of a Certificate of Occupancy for a House constructed on a Lot.

Section 5.12. Owners' Upkeep of General Appearance of Property and Lots. Each Owner of a Lot in the Development (whether said lot be vacant or otherwise), shall be responsible for maintaining his or her Lot. Lots shall be clear of rubbish and unsightly debris, vegetation and weeds should be trimmed to avoid any hazard. No improvement in the Development shall be permitted to fall into disrepair, and each improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished by the Owner or by the Association, as applicable.

Section 5.13. Signs. No sign of any kind shall be displayed to the public view without the approval of all the Owners, except (i) such signs as may be used by Declarant in connection with the development of the Property and the sale of Houses and/or Lots; (ii) such signs of customary and reasonable dimensions as may be displayed on a Lot advertising a Lot or House for sale or lease; provided that display of any "for sale" or "for lease" sign more than three feet (3') by two feet (2') shall require the prior written approval of the Board; (iii) signs in support an ongoing political campaign, which signs shall be promptly removed at the end of the

campaign; and (iv) residential identification signs not to exceed one (1) square foot in surface area. Numbers on residences shall be located in a position clearly legible from the street.

Section 5.14. Rules and Regulations. All Lots shall also be subject to such Rules and Regulations of general application as may be adopted by the Board. Such Rules and Regulations shall be binding on all Members of the Association unless duly amended by the Board or by a majority of the Total Votes of the Association.

ARTICLE VI. ARCHITECTURAL DESIGN CONTROL

Section 6.01. Architectural and Design Approval. No House, building, addition, wall, fence, alteration, or landscaping shall be begun, constructed, maintained, or permitted to remain on any Lot, or on the Common Area, until complete plans and specifications of the proposed work have been submitted to and approved by the Committee. The Committee shall review the plans and specifications within two (2) weeks from the date of submission to determine whether they are compatible with the standards of design, construction, and quality of the Development and, if they are not, shall require that changes be made before approval. All plans must include building materials and color schemes to be used and must be stamped by a licensed architect. A complete landscape plan must be submitted before landscape work begins on the Lot. All landscaping must be completed before the earlier of twenty four (24) months from the time ground is first broken or nine (9) months after a certificate of occupancy is issued by the City of Orem. Front yard landscaping must be completed within three (3) months after a certificate of occupancy is issued by the City of Orem.

Section 6.02. Dwelling Quality, Size and Set-Back Lines. All residential structures shall be constructed of quality materials and the workmanship thereof shall be of high quality. The following guidelines shall be followed:

- (a) NO pre-fabricated dwellings, mobile homes, log homes, concrete homes, round homes, octagonal homes shall be allowed in the Development.
- (b) There shall be no siding of any type used in constructing a building.
- (c) Roofing materials may include, slate tile, flat tile, and wood shingles. Architectural grade asphalt shingling may be used, if approved by the Committee. Roofing may not include barrel tile or metal roofing, except that copper may be allowed, if approved by the Committee. No glaring finishes shall be permitted on the outside of the home. All single level dwellings (ramblers) must have a minimum of a 9/12 pitch roof on all major roof lines, unless otherwise approved by the Committee. Flat roofs will not be allowed in the Development. Aluminum for soffits and eaves may be allowed, if approved by the Committee.
- (d) All exterior surfaces of buildings shall be constructed of clay brick, stone, wood or stucco. If wood or stucco are used for exterior surfaces, then the combined total usage of wood or stucco shall not exceed thirty five percent (35%) of the

total exterior surface of a dwelling. All proportions of each material used on dwelling exteriors shall be approved by the Committee. The Committee may, in its absolute discretion, modify these proportions to allow consistent architectural styles. All stucco used must be of high quality with a synthetic final finish coating, with pop outs around windows and trim.

- (e) All Houses shall contain a side-entry or an angled garage (not parallel to the street) with the capacity to contain at least two automobiles. Any exceptions must be approved by the Committee.
- (f) The ground floor area of any dwelling constructed on Lots containing 18,999 square feet or less, exclusive of garages and open porches, shall not be less than 2,250 square feet for a one-story dwelling, nor less than 1,600 square feet for a dwelling of more than one story; provided, however, that in any event, no two-story dwelling shall have less than 3,000 square feet of total above-grade living space, exclusive of garage and open porches. The ground floor area of any dwelling constructed on Lots containing 19,000 square feet or more, exclusive of garages and open porches, shall not be less than 2,500 square feet for a one-story dwelling, nor less than 1,800 square feet for a dwelling of more than one-story; provided, however, that in any event, no two-story dwelling shall have less than 3,200 square feet of total above-grade living space, exclusive of garage and open porches. The Committee may, in its absolute discretion, place a limit on the size of the dwelling.
- (g) Window wells shall be rock, masonry or concrete, but not metal.
- (h) Houses shall be located (i) at least forty-three feet (43') from the front curb line; (ii) at least thirty feet (30') from the side curb line; (iii) at least fifteen feet (15') from the side lot line; and (iv) at least thirty-five feet (35') from any rear lot line. Any exceptions to the foregoing setback requirements shall require the approval of the Committee.
- (i) Extreme styles of architecture will not be permitted. All dwellings shall conform to the style of architecture commonly known as English Tudor, Georgian, Colonial or French, or a combination thereof.

Section 6.03. Architectural Control Committee. The Committee shall consist of three (3) members, formed as follows:

- (a) The Declarant shall appoint all of the original members and all replacements until June 30, 2002, or until ninety percent (90%) of all Lots have been sold, whichever occurs first. Thereafter, the Board shall have the right to appoint all members of the Committee.
- (b) Members appointed to the Committee by the Board shall be Members of the Association. Members of the committee may be members of the Board.

- (c) The term of the initial appointees shall be one (1) year. Thereafter, members shall serve two-year terms unless it becomes necessary to remove members appointed by Declarant in order to comply with Section 6.03 (a), in which case the terms of all members shall end at that time, and the Board shall appoint a new Committee. Notwithstanding the foregoing, all members of the Committee shall serve at the will of the party that appointed them, and may be removed by that party at any time with or without cause.
- (d) The Committee shall meet as often as it deems necessary to properly carry out the obligations imposed upon it, unless otherwise directed by the Board.
- (e) The Committee or the Board shall have the authority to deviate from the requirements contained herein when such deviation is justified by extenuating circumstances, such as topography, unreasonable hardship, locations of streams, mountains or other matters favoring a variance. An affirmative vote of two-thirds (2/3) of the members of the Committee must be gained for an approval. The Committee shall not allow deviation from the requirements imposed by any governmental authority having jurisdiction over the Lot. Any Owner desiring a variance from such requirements shall apply to the appropriate governmental authority. An Owner requesting deviation from the requirements contained herein shall provide documentary proof of notification to Owners of contiguous Lots and the responses, if any, of such Owners.

ARTICLE VII. INSURANCE

Section 7.01. Fire and Casualty Insurance. The Association shall obtain and maintain a policy or policies of fire and casualty insurance with an extended coverage endorsement for the full insurable replacement value of the Common Facilities. The amount of coverage shall be determined by the Board. This insurance shall be maintained for the benefit of the Association, the Owners, and their Mortgagees, as their interests may appear as named insured, subject, however, to any loss payment requirements set forth in this Declaration.

Section 7.02. Blanket Public Liability Insurance. The Association shall obtain and maintain a policy or policies insuring the Association, Declarant, any manager, Owners, and the Owners' relatives, invitees, guests, employees, and their agents against any liability for bodily injury, death and property damage arising from the activities of the Association and its Members, with respect to the Common Area. Limits of liability under the insurance shall not be less than Two Million Dollars (\$2,000,000) covering all claims for death, personal injury, and property damage arising out of a single occurrence. The limits and coverage shall be reviewed at least annually by the Board and increased in its discretion.

Section 7.03. Other Association Insurance. The Association shall purchase and maintain workers' compensation insurance to the extent necessary to comply with any applicable laws. The Association also shall purchase and maintain fidelity bond coverage which names the Association as an obligee, for any person or entity handling funds of the Association, whether or

not such persons or entities are compensated for their services. This coverage shall be in amount that is at least equal to the estimated maximum of funds, including reserve funds, to be in the custody of the Association (or the Manager) at any given time during the term of each bond. However, the aggregate amount of these bonds must not be less than one hundred fifty percent (150%) of each year's estimated annual operating expenses and reserves. The Association also may purchase and maintain a blanket policy of flood insurance and demolition insurance in an amount that is sufficient to cover any demolition of Common Facilities that occurs following the total or partial destruction of the Development and a decision not to rebuild.

Section 7.04. Trustee for Policies. The Association, acting through its Board, is hereby appointed and shall be deemed trustee of the interests of all named insureds under all insurance policies purchased and maintained by the Association. All insurance proceeds for any of those policies shall be paid to the Board as trustee. The Board shall use the proceeds for any of the purposes specified in Article IX of this Declaration. The Board also is authorized to negotiate loss settlements with the appropriate insurance carriers, to compromise and settle any claim or enforce any claim by any lawful action, and to execute loss claim forms and release forms in connection with such settlements.

Section 7.05. Additional Coverage. The provisions of this Declaration shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage in addition to any insurance coverage required by this Declaration, in such amounts and in such forms as the Association may deem appropriate from time to time.

Section 7.06. Individual Insurance. Each Owner shall provide fire and casualty insurance for the improvements on his or her Lot. An Owner may separately insure his or her personal property, and may obtain and maintain personal liability and property damage liability insurance for his or her Lot, provided that the insurance contains a waiver of subrogation rights by the carrier as to the other Owners, the Association, Declarant, and the institutional First Mortgagees of the Owner's Lot.

Section 7.07. Insurance Premiums. Insurance premiums for any insurance coverage obtained by the Association shall be included in the Common Expenses. That portion of the regular assessments necessary for the required insurance premiums shall be used solely for the payment of the premiums when due.

ARTICLE VIII. CONDEMNATION

Section 8.01. Condemnation. If at any time or times all or any part of the Common Areas shall be taken or condemned by any public authority under power of eminent domain, the provisions of this article shall apply. A voluntary sale or conveyance of all or any part of the Development in lieu of condemnation, but under threat of condemnation, shall be deemed to be a taking by power of eminent domain. The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Areas, or any part thereof, and each Owner hereby appoints the Association as such Owner's attorney-in-fact for the purposes of such representation.

Section 8.02. Proceeds. All compensation, damages and other proceeds from any such taking of Common Areas by power of eminent domain (hereinafter the "condemnation award") shall be made payable to the Association and shall be allocated distributed to the Owners by the Board, on behalf of the Association, as provided below.

Section 8.03. Complete Taking. In the event the entire Development is taken by power of eminent domain, ownership pursuant to this Declaration shall terminate, and the condemnation award for Common Areas shall be allocated and distributed among the Owners with an equal share allocated to each Lot. Such distribution shall be made by check payable jointly to the Owners and their respective Mortgagees, as appropriate.

Section 8.04. Partial Taking. In the event that less than the entire Development is taken by power of eminent domain, then the following provisions apply:

- (a) Allocation of Proceeds. As soon as practicable, the Board, on behalf of the Association, shall (i) if apportionment or allocation is already established by negotiation, judicial decree, statute, or otherwise, employ such apportionment or allocation to the extent that it is relevant and applicable; or (ii) if apportionment or allocation has not been established or is not applicable to the entire condemnation award, reasonably and in good faith apportion the condemnation award or the portion thereof not already apportioned between compensation, severance damages or other proceeds and allocate and distribute the proceeds to the Owners as follows:
- (1) The total amount apportioned to taking of or injury to the Common Areas shall be allocated among and distributed to all Owners (including Owners whose entire Lots have been taken) equally.
 - (2) The total amount apportioned to severance damages shall be allocated among and distributed equally to the Owners whose Lots have not been taken.
 - (3) Any amounts apportioned to the taking of or injury to a particular Lot shall be distributed to the Owner or Mortgagee of that Lot, as appropriate.
 - (4) The respective amounts apportioned to consequential damages and any other takings or injuries shall be allocated and distributed as the Board determines to be equitable under the circumstances.
 - (5) Distribution of allocated proceeds shall be made by check payable jointly to individual Owners and their respective Mortgagees, as their interests may appear.
- (b) Reorganization of Development. After a partial taking, ownership pursuant to this Declaration shall continue, and the Development shall be reorganized as follows:

- (1) If an entire Lot is taken, the Owner of that Lot shall no longer be a member of the Association and all voting rights appertaining to that Lot shall terminate.
- (2) If a portion of a Lot is taken, the voting rights appertaining to that Lot shall continue, unless the Board of Trustees, after considering any recommendations from the Owners, determine that the portion of the Lot not taken cannot be practically used as a Lot, in which case the voting rights shall terminate.
- (3) The Board of Trustees shall have the duty and authority to take all actions necessary or appropriate to effectuate reorganization of the Development.

ARTICLE IX DAMAGE OR DESTRUCTION

Section 9.01. Association as Attorney-in-Fact. Each of the Owners irrevocably appoint the Association as its true and lawful attorney-in-fact for the purpose of dealing with damage or destruction of the Common Areas, as provided herein. Acceptance by any grantee of a deed from the Declarant or from any Owner shall constitute an appointment by that grantee of the Association as the grantee's attorney-in-fact for the purpose set forth above. As attorney-in-fact, the Association shall have full and complete authorization to make, execute and deliver any contract, deed or other instrument with respect to the Common Areas that may be necessary or appropriate to exercise the powers granted in this Article.

Section 9.02. Procedure. In the event that all or any part of the Common Areas should be damaged or destroyed, the Association shall proceed as follows:

- (a) As soon as practicable, the Association shall obtain estimates of the costs to repair and reconstruct the part of the Common Areas damaged or destroyed.
- (b) If the proceeds of the insurance maintained by the Association equal or exceed the estimated costs of repair or reconstruction, the Association shall effect such repair or reconstruction with such proceeds. If insurance proceeds are less than the estimated costs of repair or reconstruction, the Association shall levy a special assessment sufficient to provide the additional funds needed to pay the actual costs of repair or reconstruction, without the necessity of the vote normally required under this Declaration for special assessments. Such insurance proceeds and funds from assessments shall constitute a Repair Fund.
- (c) As soon as practicable, the Association shall commence and diligently pursue to completion the repair and reconstruction of the Common Areas damaged or destroyed. The Association may take all actions necessary or appropriate to effect such repair or reconstruction, as attorney-in-fact for the Owners, and no consent or other action by any Owner shall be necessary in connection therewith, except as otherwise expressly provided in this Declaration. The Common Areas shall be

restored to substantially the same condition in which they existed prior to the damage or destruction.

- (d) After repair or reconstruction, if a balance remains in the Repair Fund, it shall be distributed to the Owners equally.

ARTICLE X. RIGHTS OF MORTGAGEES

Section 10.01. First Mortgagee Roster. The Association shall maintain a roster of Owners, which roster shall include the mailing addresses of all Owners, together with the name and address of each First Mortgagee of each Lot if the Association is provided notice of such First Mortgage by way of a certified copy of the recorded instrument evidencing the First Mortgage and containing the name and address of the First Mortgagee. The First Mortgagee shall be stricken from the roster upon request by such First Mortgagee or upon receipt by the Association of a certified copy of a recorded release or satisfaction of the First Mortgage. Notice of such removal shall be given to the First Mortgagee unless the removal is requested by the First Mortgagee.

Section 10.02. Notification of Default. The Association shall give to any First Mortgagee on the roster written notification of any default continuing for more than thirty (30) days by the Mortgagor in the performance of such Mortgagor's obligations under this Declaration.

Section 10.03. Foreclosure. A First Mortgagee of any Lot who comes into possession of the Lot pursuant to the remedies provided in the First Mortgage or through foreclosure of the First Mortgage, or by way of deed or assignment in lieu of foreclosure, shall take the Lot free of any claims for unpaid assessments or charges against the mortgaged Lot which accrued prior to the time such First Mortgagee comes into the possession of the Lot.

Section 10.04. Subordination of Liens. Any liens created pursuant to this Declaration or the Bylaws upon any Lot shall be subject and subordinate to and shall not affect the rights of a First Mortgagee under a First Mortgage on such Lot made in good faith and for value; provided, however, that any lien created after a foreclosure sale shall have the same effect and be enforced in the same manner as provided in this Declaration and/or the Bylaws.

Section 10.05. Amendments. No amendment to this paragraph shall adversely affect a First Mortgagee who has recorded a valid First Mortgage prior to the recordation of any such amendment.

ARTICLE XI. ANNEXATION OF ADDITIONAL PROPERTY

Section 11.01. Addition by Declarant. Declarant shall have the right to add to the Development any property adjacent thereto. This election shall be made by the recordation of a supplemental declaration ("Supplemental Declaration"). The Supplemental Declaration shall describe the real property to be annexed, and shall state that the property described in it is being

annexed to the Development pursuant to Article XI of this Declaration. The Supplemental Declaration may also set forth any additional covenants, conditions, restrictions, reservations, and easements that Declarant deems appropriate for that phase of development.

Section 11.02. Rights and Obligations of Owners and Annexed Property. Upon the recordation of the Supplemental Declaration, the real property described in it shall be part of the Development and subject to the provisions of this Declaration in the same manner as if it were originally covered by this Declaration. Thereafter, the rights, powers, and responsibilities of Owners of Lots within the annexed property shall be the same as if the annexed property were originally covered by this Declaration; provided, however that their voting rights shall not commence until the date of commencement of the regular assessments for their Lots.

Section 11.03. Reciprocal Easements. Declarant hereby reserves, for the benefit of and appurtenant to the Lots located in any phase of development annexed to the first phase of this Development and their respective Owners, reciprocal easements to use the Common Area in the first phase pursuant to and in the manner set forth in this Declaration. Declarant hereby grants, for the benefit of and appurtenant to the Lots in the first phase of this Development and their Owners, a nonexclusive easement to use the Common Area in each phase of development annexed to the first phase, pursuant to and in the manner set forth in this Declaration. These reciprocal easements shall be effective as to any annexed real property upon the first close of escrow for the sale of a Lot in the annexed property.

ARTICLE XII. GRANT OF EASEMENTS TO OTHER DEVELOPMENTS

The Association may grant, in its absolute discretion, easements or rights of way to owners of other real property developments ("other developments") not located within the Development for ingress and egress across private roads within the Development in consideration of reasonable fees paid by other developments which fees shall be comparable to that portion of Association common area fees attributable to private roads and gates used specifically for ingress and egress.

ARTICLE XIII. AMENDMENTS

Section 13.01. Amendment or Revocation Before Close of First Sale. At any time before the close of the first sale of a Lot to a purchaser other than the Declarant, Declarant and any Mortgagee of record may, by executing an appropriate instrument, amend or revoke this Declaration. The executed instrument shall be acknowledged and recorded in the Office of the Recorder of Utah County.

Section 13.02. Amendments by Owners After Close of First Sale. At any time after the close of the first sale of a Lot to a purchaser other than Declarant, this Declaration may be amended by the vote or written consent of Owners representing not less than sixty-seven percent (67%) of the voting power of each class of Owners of the Association. If only one class of membership exists at the time an amendment is proposed, then it must be approved by not less

than sixty-seven percent (67%) of the voting power of the Association, which shall include at least a majority of the votes residing in Owners other than Declarant. Notwithstanding any contrary provision in this section, the percentage of the voting power necessary to amend a specific clause or provision of this Declaration shall not be less than the percentage of affirmative votes prescribed for action taken under that clause or provision.

An amendment becomes effective after (i) the approval of the required percentage of Owners has been given, (ii) that fact has been certified in a writing executed and acknowledged by an officer designated by the Association for that purpose or, if no such designation is made, by the President of the Association and (iii) that writing has been recorded in Utah County.

Section 13.03. Amendments Pursuant to Court Order. If this Declaration requires a proposed amendment to be approved by the affirmative vote of a specified percentage (exceeding fifty percent (50%) of the votes in the Association (a "supermajority"), and more than fifty percent (50%) but less than the required supermajority of the votes approve the amendment, the Association or any Owner may petition the Fourth Judicial District Court for Utah County for an order reducing the percentage of the affirmative votes necessary for the amendment or approving the amendment. If such an order is issued, the amendment shall be acknowledged by any person designated by the Association for that purpose or, if no such designation is made, by the President of the Association and that person shall have the amendment and the court order recorded in Utah County. Upon recordation, the amended provision or provisions of this Declaration shall have the same force and effect as if the amendment were adopted in compliance with every requirement imposed by this Declaration and the other governing documents. Within a reasonable time after recordation, the Association shall mail a copy of the amendment and a statement regarding the amendment to each Owner.

ARTICLE XIV. GENERAL PROVISIONS

Section 14.01. Term. The provisions of this Declaration shall continue in effect for a term of forty (40) years from the date of execution. Thereafter, it shall be automatically extended for successive periods of five (5) years, until the membership of the Association by a vote of not less than seventy-five percent (75%) of the total votes of the Association decides to terminate it.

Section 14.02. Nonwaiver of Remedies. Each remedy provided for in this Declaration is separate, distinct, and nonexclusive. Failure to exercise a particular remedy shall not be construed as a waiver of the remedy.

Section 14.03. Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision shall not affect the validity or enforceability of any other provisions.

Section 14.04. Binding. This Declaration as well as any amendment thereto and any valid action or directive made pursuant thereto, shall be binding on the Declarant and the Owners and their heirs, grantees, tenants, successors, and assigns.

Section 14.05. Interpretation. The provisions of this Declaration shall be liberally construed and interpreted to effectuate its purpose of creating a uniform plan for the development and operation of a planned development. Failure to enforce any provision of this Declaration shall not constitute a waiver of the right to enforce that provision or any other provisions of this Declaration.

Section 14.06. Fair Housing. Neither Declarant nor any Owner shall, either directly or indirectly, forbid the conveyance, encumbrance, renting, leasing, or occupancy of the Owner's Lot to any person on the basis of race, color, sex, religion, ancestry, or national origin.

Section 14.07. Number and Headings. As used in this Declaration, the singular shall include the plural, unless the context requires the contrary. The headings are not part of this Declaration, and shall not affect the interpretation of any provision.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the date first set forth above.

PRIME WEST DEVELOPERS, LC,
a Utah limited liability company

By Nathan Welch
Name: Nathan Welch
Title: Manager

STATE OF UTAH)
 : ss.
COUNTY OF UTAH)

The foregoing instrument was acknowledged before me this 15th day of August, 2000 by Nathan Welch, Manager of Prime West Developers, LC, a Utah limited liability company.

Holly M. Shafer
NOTARY PUBLIC
Residing at: _____

My Commission Expires:

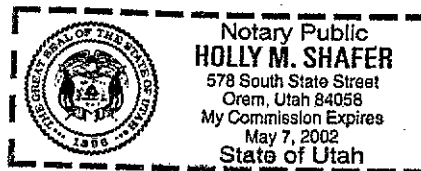


EXHIBIT "A"

Lots 1 through 43, Cove Estates Subdivision, Orem, Utah, according to the official plat thereof on file in the office of the Recorder, Utah County, Utah.