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THIS DECLARATION is made this 30<sup>th</sup> day of January, 1995, by BTS INVESTMENTS, INC., a Utah Corporation ("Declarant").

#### RECITALS

A. Declarant is the owner of that certain real property located in the City of Provo, County of Utah, State of Utah and more particularly described on the Subdivision Map attached hereto and filed simultaneously herewith at the Office of the Recorder of Utah County, State of Utah. Said property more particularly described on attached EXHIBIT "A"

B. Pursuant to the general plan set forth in this Declaration, Declarant intends to subdivide the Property into Lots and parcels, to improve the Lots and parcels, and to create a planned 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 declarations, limitations, covenants, conditions, restrictions, reservations, rights, and easements set forth in this Declaration, as this Declaration may be 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. All covenants and restrictions set forth in this Declaration shall constitute covenants running with the land and enforceable equitable servitudes upon the Property, and shall be binding on and for the benefit of all the Property and all parties having or acquiring any right, title, or interest in all or any part of the Property, including the heirs, executors, administrators, and assigns of these parties and all subsequent owners and lessees of all or any part of any Lot in the Development.

#### ARTICLE I. DEFINITIONS

Section 1.01. "Articles" means the Articles of Incorporation of VINTAGE ON THE RIVER HOMEOWNERS ASSOCIATION, INC. and any amendments to the Articles that are or shall be filed with the State of Utah.

Section 1.02. "Association" means VINTAGE ON THE RIVER HOMEOWNER'S ASSOCIATION, INC., a Utah nonprofit corporation.

Section 1.03. "Board" means the Board of Directors of the Association.

Section 1.04. "Bylaws" means the Bylaws of the Association and any amendments to the Bylaws that are or shall be adopted by the Board.

Section 1.05. "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.

Section 1.06. "Declarant" means BTS INVESTMENTS, INC., a Utah Corporation and its successors and assigns.

Section 1.07. "Declaration" means this Declaration and any amendments therein.

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RANDALL A. COVINGTON  
UTAH COUNTY RECORDER  
1995 FEB 2 12:40 PM FEE 129.00 BY AC  
RECORDED FOR BTS INVESTMENTS

(M) 750 N. 200W #101  
PROVO, UT 84601

Section 1.08. "Development" means the Property, any additional real property annexed to the Property pursuant to Article XI of this Declaration, and all improvements on the Property.

Section 1.09. "Governing Instruments" means this Declaration, the Articles and Bylaws of the Association, and any Rules and Regulations of the Development.

Section 1.10. "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 of any Supplemental Declaration recorded pursuant to Articles XI of this Declaration.

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Section 1.11. "Manager" means any person or entity appointed by the Board to manage the Development.

Section 1.12. "Member" means every person or entity entitled to membership in the Association as provided in this Declaration.

Section 1.13. "Mortgage" means a mortgage or deed of trust encumbering a Lot or any other portion of the Development. "First Mortgage" means a mortgage that has priority over all other mortgages encumbering the same Lot or other portion of the Development.

Section 1.14. "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). "First Mortgagee" means a Mortgagee that has priority over all other mortgages or holders of mortgages encumbering the same Lot or other portion of the Development. The term "Beneficiary" shall be synonymous with the term "Mortgagee."

Section 1.15. "Mortgagor" means a Person who mortgages his, her, or its property to another (i.e., the maker of a mortgage), and shall include the trustor of a deed of trust. The term "Trustor" shall be synonymous with the term "Mortgagor."

Section 1.16. "Owner" means the record holder or holders of record 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.

Section 1.17. "Person" means a natural individual, a corporation, or any other entity with the legal right to hold title to real property.

Section 1.18. "Property" means the real property described in the Recitals.

Section 1.19. "Rules and Regulations" means any Rules and Regulations for VINTAGE ON THE RIVER regulating the use of the Common Area and adopted by the Association pursuant to Section 3.06(b) of this Declaration.

Section 1.20. "Subdivision Map" means the recorded map described in the Recitals and any subdivision map recorded in connection with the annexation of additional real property to the Development pursuant to Article XI of this Declaration.

## ARTICLE II. THE PROPERTY

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Section 2.01. Property Subject to Declaration. All the Property in the Development shall be subject to this Declaration.

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

Section 2.03. Title to Common Areas. Prior to the final closing of the first sale of a Lot in the Development, Declarant or its successors or assigns shall convey to the Association title 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, a copy of which is attached hereto as Exhibit "B," including 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) Subject to the provisions of this Declaration, there is an easement for ingress, egress, and support through the Common Area appurtenant to each Lot. These easements shall pass with title to the Lot.
- (b) The Owners' easements over, and rights of use and enjoyment of, the Common Area shall be subject to the restrictions set forth in the Governing Instruments, including the following:
  - (1) The right of the Association to adopt and enforce Rules and Regulations for the Common Area.
  - (2) The right of the Association to reasonably limit the number of guests and tenants using the Common Area.
  - (3) The right of the Association to assign or otherwise control the use of any unassigned parking spaces within the Common Area.
  - (4) The right of the Association to suspend the right of any Owner, and the Persons deriving rights from any Owner, to use and enjoy the Common Area for any period during which the Owner is delinquent in the payment of any assessment.
  - (5) 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.
  - (6) 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.

(7) The right of each Owner to the exclusive use of any Exclusive Use Common Area appurtenant to the Owner's Lot.

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(8) The rights of Declarant as described in this Declaration.

(9) The right of the Association to reasonably restrict access to roofs, maintenance facilities or areas, landscaped areas, and similar areas of the Development.

(10) The right of the Architectural Control Committee to approve any proposed alteration or modification to the Common Area or any Lot.

(c) Declarant hereby reserves easements for common driveway purposes, for drainage and encroachment purposes, and for ingress to and egress from the Common Area. These easements may be used to complete improvements on the Common Areas and to perform necessary repair work, and for entry onto adjacent property in connection with the development of additional phases of the overall Development.

(d) 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 can be granted if it would interfere with any exclusive easement, or with any Owner's use, occupancy, or enjoyment of his or her Lot.

(e) 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.

(f) Each Owner shall be liable to the Association for any damage to the Common Area or to Association-owned property, to the extent that the damage is not covered by insurance, if the damage is sustained because of the negligence, wilful misconduct, unauthorized or improper installment or maintenance of any improvement by the Owner of the Owner's family guests, tenants, contract purchasers, tenants, 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.

Section 2.05. Maintenance by Owners. Each Owner shall maintain his or her Lot and the improvements located on it in a clean, sanitary, and attractive condition. This duty to maintain includes a responsibility to repair any damage to the improvements located on the Owner's Lot occasioned by the presence of wood-destroying pests or organisms, provided that a majority of the Owners do not vote to have the Association:

(a) Arrange for the necessary repairs; and

(b) Levy a special assessment to recover the resulting costs.

In addition, each owner shall maintain those portions of any heating and cooling equipment and all plumbing, electrical, and gas lines, apparatus, and other equipment that are located within or that exclusively serve his or her Lot. This maintenance shall be at the Owner's expense. However, the Owner shall not take any actions that would impair or otherwise alter the structural integrity or mechanical systems or lessen the support of any structural member, without the prior written approval of the Architectural Control Committee, as provided in Article VI of this Declaration.

Section 2.06. Easements for Maintenance of Encroachments. None of the rights and obligations of the Owners described in this Declaration or created by deed shall be altered in any way by encroachments due to settlement or shifting of structures or any other cause. There shall be valid easements for the maintenance of such encroachments so long as the encroachments exist. However, in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if the encroachment occurred due to the wilful conduct of the Owner or Owners.

Section 2.07. Prohibition Against Severance of Elements of Lot. Any conveyance, judicial sale, or other voluntary or involuntary transfer of the Owner's entire estate shall include the Owner's Membership interest in the Association, as provided in Section 2.02 of this declaration. Any transfer that attempts to sever those component interests shall be void.

### ARTICLE III. OWNERS' ASSOCIATION

Section 3.01. Organization of the Association. The Association is or shall be incorporated under the name of VINTAGE ON THE RIVER HOMEOWNER'S 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 of Incorporation, and the Bylaws.

Section 3.02. Membership. Every owner, upon becoming an Owner, shall automatically become a Member of the Association. Ownership of a Lot is the sole qualification for membership. Each Member shall have the rights, duties, privileges, and obligations set forth in the Governing Instruments. Membership shall automatically cease when the Owner no longer holds an ownership interest in a Lot. All memberships shall be appurtenant to the Lot conveyed, and cannot be transferred, assigned, conveyed, hypothecated, pledged, or alienated except as part of a transfer of the Owner's entire ownership interest, and then only to the transferee. Any transfer of the Owner's title to his or her Lot shall automatically transfer the appurtenant membership to the transferee.

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

(a) All Owners, other than the Declarant, shall be Class A members. Class A membership entitles the holder to one vote for each Lot owned. When a Lot is owned by more than one person, only one vote may be cast for the Lot, as provided in Section 3.04(b) of this Declaration.

(b) The Declarant shall be the sole Class B member. The Class B member shall be entitled to three votes for each Lot owned. Class B membership shall cease and be converted to Class A membership upon the occurrence of whichever of the following is first in time:

(1) The total outstanding votes of the Class A Owners equals or exceeds the total outstanding votes of the Class B member; or

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(2) On January 1, 1997.

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

(a) Except as provided in this Article, on each matter submitted to a vote of the Owners, each Owner shall be entitled to cast one vote for each Lot owned.

(b) Fractional votes shall not be allowed. When there is more than one record Owner of a Lot ("co-owners"), all of the co-owners shall be Members, but only one of them shall be entitled to cast the single vote attributable to the Lot. Co-owners should designate in writing one of their number to vote. If no such designation is made or if it is revoked, the co-owners shall decide among themselves, by majority vote, how that Lot's vote is cast. Unless the Board receives a written objection in advance from a co-owner, it shall be conclusively presumed that the voting co-owner is acting with the consent of his or her co-owners. No vote shall be cast for the Lot on a particular matter if a majority of the co-owners present in person or by proxy cannot agree on a vote.

(c) Except as provided in Section 3.06(a) and/or 3.07(c) of this Declaration, governing the enforcement of certain bonded obligations and any relevant sections of the Bylaws, governing the removal of directors, as long as two classes of voting memberships exist, any provision of this Declaration, the Articles, or the Bylaws that requires the approval of a specified percentage of the voting power of the Association (rather than simply requiring the vote or written consent of a majority of a quorum) shall require the approval of the specified percentage of the voting power of each class of membership. Except as provided in Section 3.06(a) and/or 3.07(c) of this Declaration and any relevant sections of the Bylaws, when the Class B membership has terminated, any provision of this Declaration, the Articles, or the bylaws that requires the approval of a specified percentage of the voting power of the Association shall require the vote on written consent of Owners representing the specified percentage of both the total voting power of the Association and the voting power of the Association residing in Owners other than Declarant.

(d) The Board shall fix, in advance, a record date or dates for the purpose of determining the Owners entitled to notice of and to vote at any meeting of members. the record date for notice of a meeting shall not be more than 90 days nor less than 10 days before the date of the meeting. The Record date for voting shall not be more than 60 days before the date of the meeting or before the date on which the first written ballot is mailed or solicited. The Board may also fix, in advance, a record date for the purpose of determining the Owners entitled to exercise any rights in connection with any other action. Any such date shall not be more than 60 days prior to the action.

(e) Every Owner entitled to vote at any election of the Directors may cumulate the Owner's votes and give one candidate a number of votes equal to the number of Directors to be elected multiplied by the number of votes to which the Owner is entitled, or distribute the Owner's votes on the same principle among as many candidates as the Owner thinks fit. No Owner shall be entitled to cumulate votes for a candidate or candidates unless the candidate's name or candidates' names have been placed in nomination prior to voting and an Owner has given notice at the

meeting prior to the voting of the Owner's intention to cumulate votes. If any one Owner has given this notice, all Owners may cumulate their votes for candidates in nomination.

Section 3.05. Membership Meetings. Article II of the Bylaws governing meetings of the Members is hereby incorporated by reference.

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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:

(a) The Association shall have 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.

(b) The Association shall have the power to adopt reasonable Rules and Regulations governing the use of the Common Area and its facilities, and of any other Association property. These Rules and Regulations may include, but are not limited to: reasonable restrictions on use by the Owners and their family, guests, 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 provisions of this Declaration, the Articles, or the Bylaws, the Declaration, Articles, or Bylaws shall control to the extent of the inconsistency.

(c) The Association shall have the right 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 the Lots that the Association is obligated to maintain or repair.

(4) Damage to the Lots that arises out of, or is integrally related to, damage to the Common Area or Lots 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.

(d) In addition to the general power of enforcement described above, the Association may discipline its Owners for violation of any of the provisions of the Governing Instruments or Rules and Regulations by suspending the violator's voting rights and privileges for use of the Common Area, or by imposing monetary 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 60 days for each violation.

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(3) Any monetary penalty shall not exceed \$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 Association, acting through the Board, shall have 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 year, renewable by agreement of the parties for successive one-year periods. Such an agreement shall be terminable by either party (1) for cause on 30 days' written notice and (2) without cause or the payment of a termination fee on 90 days' written notice.

(f) The Association's agents or employees shall have the right to enter any Lot when necessary in connection with the maintenance, landscaping, or construction work for which the Association is responsible. This entry shall be made only upon notice to the Owner (except in the case of an emergency) and with as little inconvenience to the Owner as is practicable, and the Association shall repair any resulting damage at its own expense.

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) The Association, acting through the Board, shall operate, maintain, repair, and replace the Common Area and its improvements, or contract for the performance of that work, subject to the provisions of Article VIII of this Declaration relating to destruction of improvements, Article IX of this Declaration pertaining to eminent domain, Section 2.05 of this Declaration governing damages caused by wood-destroying pests or organism, and Section 2.04(f) of this Declaration relating to damage caused by Owners. The foregoing areas and improvements shall be kept in a clean, sanitary, and attractive condition. The Association shall also have the exclusive right and duty to acquire and maintain any furnishings and equipment for the Common Area that it determines are necessary and proper. As a general rule, maintenance costs shall be included in the regular assessments. If the Owner does not pay for the additional work required as result of such Owner's liability pursuant to Section 2.04(f) within 30 calendar days after receiving the bill, the Association shall institute appropriate collection actions and shall recover the reasonable costs of collection, including attorneys' fees and interest from the due date until paid at the rate of 18 percent per annum.

(b) The Association shall use the maintenance fund described in Section 4.03 of this Declaration to, among other things, acquire and pay for the following:



(1) Water, sewer, garbage, electrical, telephone, gas, elevator, and other necessary utility service for the Common Area and, to the extent not separately metered and charged, for the Lots;

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(2) The insurance policies described in Article VII of this Declaration;

(3) The services of any personnel that the Board determines are necessary or proper for the operation of the Common Area; and

(4) Legal and accounting services necessary or proper in the operation of the Common Area or the enforcement of this Declaration.

(c) The Association shall prepare a pro forma operating budget for each fiscal year and distribute a copy to each Owner not less than 45 and not more than 60 days prior to the beginning of the fiscal year. This budget shall contain at least the following:

(1) The estimated revenue and expenses on an accrual basis;

(2) The amount of the total cash reserves currently available for replacement or major repair of common facilities and for contingencies; and

(3) Concerning any major components of the common area and facilities for which the Association is responsible, the following information: (i) an itemized estimate of the remaining life; (ii) the methods of funding to defray the costs of repair, replacement, or additions; and (iii) a general statement of procedures used to calculate and establish reserves for the expense set forth in (2), supra.

(d) Within 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 changes in financial position for the fiscal year.

(4) For any fiscal year in which the gross income to the Association exceeds \$75,000, a copy of the review of the annual report prepared in accordance with generally accepted accounting principles by a Certified Public Accountant.

(e) Within 60 days prior to the beginning of each fiscal year, the Association shall prepare and distribute to the Owners a statement describing the Association's policies and practices in enforcing lien rights or legal remedies for default in payment of assessments against Owners.

(f) The Association shall prepare a balance sheet, as of an accounting date that is the last day of the month closest in time to six 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 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.

(g) The Association shall provide any Owner with the following documents within 10 days of the mailing or delivery of a written request therefor:

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(1) A copy of the Governing Instruments.

(2) A copy of the most recent financial statement distributed pursuant to Section 3.07(d) 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 4.09 of this Declaration. The Association may charge the Owner a reasonable fee to cover its cost to prepare and reproduce those requested items.

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

(j) The Association shall enter into an agreement with Provo City Corporation to provide garbage removal services to the Property.

(k) The Association shall be responsible to employ or contract with personnel to remove all snow from the private streets located in the Property.

(l) In the event the Association determines to dedicate the private streets within the Property to Provo City Corporation, then the Association shall be responsible to improve all private streets according to width standards and other standards as required by Provo City Corporation.

(m) The Association shall be responsible to erect and maintain above-ground signs every fifty (50) feet on, at least, one side of the street which state: "NO PARKING - FIRE LANE - TOW AWAY ZONE."

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, as provided in Article III of the Bylaws, which is hereby incorporated by reference.

Section 3.09. Inspection of Books and Records. Article XI of the Declaration, governing the duty of the Association to maintain certain books and records and the rights of Owners and Directors to obtain and inspect those books and records, is hereby incorporated by reference.

#### ARTICLE IV. ASSESSMENTS AND COLLECTION PROCEDURES

Section 4.01. Covenant to Pay. Each Owner (excluding Declarant) by acceptance of the deed to the Owner's Lot is deemed to covenant and agree, to pay to the Association the regular and special assessments levied pursuant to the provisions of this Declaration. A regular or special assessment and any late charges, reasonable costs of collection, and interest, as assessed in accordance with the provisions of

this Article, shall be a debt of the Owner of the Lot at the time assessment or other sums are levied. The Owner may not waive or otherwise escape liability for these assessments by nonuse of the Common Area or abandonment of the Owner's Lot.

Section 4.02. Exemptions from Assessments. There shall be no regular or special assessments levied against any Lot owned by Declarant.

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Section 4.03. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners, for the operation, replacement, improvement, and maintenance of the Property, and to discharge any other obligation so the Association under this Declaration. All assessment payments shall be put into a maintenance fund to be used for the foregoing purposes.

Section 4.04. Regular Assessments. Within 60 days prior to the beginning of each calendar year, the Board shall estimate the net charges to be paid during that year, including a reasonable provision for contingencies and replacements, with adjustments made for any expected income and surplus from the prior year's fund. The estimated cash requirement shall be assessed to each Owner according to the ratio of the number of Lots owned by the Owner assessed to the total number of Lots in the Development subject to assessment. Regular assessments for fractions of any month shall be prorated. Each Owner is obligated to pay assessments to the Board in equal monthly installments on or before the first day of each month unless the Board adopts an alternative method for payment.

Section 4.05. Special Assessments. If the Board determines that the amount to be collected from regular assessments will be inadequate to defray the common expenses for the year due to the cost of any construction, unexpected repairs or replacements of capital improvements upon the Common Area, or any other reason, it shall make a special assessment for the additional amount needed.

Section 4.06. Limitations on Assessments. Except in 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 20 percent greater than the regular annual assessment for the preceding year, or levy special assessments that in the aggregate exceed 5 percent 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 pro forma operating budget pursuant to Section 3.07(c).

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 4.07. 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 4.08. 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.

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(b) A late charge not exceeding 10 percent of the delinquent assessment or \$10, whichever is greater.

(c) Interest on the foregoing sums, at an annual percentage rate of 18 percent, commencing 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.

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 4.09. Enforcement of Assessments and Late Charges. A delinquent regular or special assessment and any related late charges, reasonable costs of collection, and interest assessed in accordance with Section 4.08 of this Declaration, shall become a lien upon the Lot when a notice of delinquent assessment is duly recorded with the Utah County Recorder.

Any such lien may be enforced in any manner permitted by law, including judicial foreclosure or nonjudicial foreclosure.

If the sums specified in the notice of delinquent assessment are paid before the completion of any judicial or nonjudicial foreclosure, the Association shall record a notice of satisfaction and release of the lien. Upon receipt of a written request by Owner, the Association shall also record a notice of rescission of any declaration of default and demand for sale.

Section 4.10. Statement of Delinquent Assessment. The Association shall provide any Owner, upon written request, with a statement specifying the amounts of any delinquent assessments and related late charges, interest, and costs levied against the Owner's Lot, as provided in Section 4.08 of this Declaration.

## 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 do any of the following:

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- (a) Attempt to further subdivide a Lot without obtaining the prior approval of the Association.
  - (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 residence. Nothing in this Declaration shall prevent an Owner from leasing or renting out his or her Lot, provided that it is (1) not for transient or hotel purposes, (2) for a period of at least 60 days, and (3) 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 Exclusive Use Common Area 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, in any Exclusive use Common Area appurtenant to the Lot, or in the Common Area that would result in the cancellation of insurance on any Lot or Exclusive Use Common Area or on any part of the Common Area or that would violate any law.
  - (e) Store gasoline, kerosene, cleaning solvents, or other flammable liquids in the Common Area or on any Lot; provided, however, that reasonable amounts of these liquids may be placed in metal containers and stored in the storage spaces.
  - (f) 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.
  - (g) Display any sign to the public view on or from any Lot or the Common Area without the prior written consent of the Board, except a sign (approved by the Board) advertising the property for sale, lease, or exchange.
  - (h) 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 Provo City Ordinances), which may be kept on Lots, subject to the Rules and Regulations.
  - (i) Engage in any noxious or offensive activity in any part of the Development.
  - (j) Alter or modify the exterior of any improvements located on a Lot without first obtaining the written consent of the Architectural Control Committee.
  - (k) Alter, construct, or remove anything on or from the Common Area, except upon the written consent of the Board.
  - (l) Park any automobile or other motor vehicle in the Common Area except in designated areas.
  - (m) Cut any living tree on any Lot in excess of two inches in diameter without the prior written consent of the Architectural Control Committee.

(n) Park any campers, trailers, boats, equipment, recreational vehicles, motor homes, or other similar vehicles on a Lot for more than 24 consecutive hours other than in an enclosed garage or behind a residential structure constructed on a Lot.

(o) Park any campers, trailers, boats, equipment, recreational vehicles, motor homes, or other similar vehicles in the Common Area.

(p) Allow trash, garbage, or other waste to be kept in other than sanitary containers. All rubbish, trash and garbage shall be regularly removed from the properties, 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.

(q) Erect, construct, place or permit to remain on any of the dwellings or structures in the Development any television, radio, satellite dishes larger than 3 feet in diameter, shortwave or other electronic antenna or device of any type unless and until the same shall be approved in writing by the Architectural Committee of the Association. Satellite dishes smaller than 3 feet in diameter must be located on the back of the dwelling and not viewable from the street.

(r) Allow any erosion from all slopes or terraces on any lot so as to prevent any erosion thereof upon adjacent streets or adjoining property.

(s) Permit any ingress or egress to the tract described herein for use of any person or vehicle except through designated gateways. However, Declarant, its successors or assigns, reserves the right to maintain and use or convey the right to use established easements and rights-of-way.

(t) Permit the use of sports and/or tennis courts after the hour of 10:00 o'clock p.m., permit obnoxious, offensive or loud noise thereon or permit dwelling, sport and/or tennis court lighting to interfere with the quiet enjoyment of other Owners.

Section 5.02. Required Trees, Mailbox Enclosures and Street Light Fixtures. Each Lot upon which a residential dwelling is constructed shall have planted thereon at the Owner's sole expense, a minimum of three (3) one and one-half (1/2) inch caliper deciduous trees or three (3) evergreen trees which stand four (4) feet tall and four shrubs and foundation planting of appropriate shrubs, flowers or ground-covers. The location of trees shall be approved by the Architectural Control Committee. An Owner may, if approved by the Committee in its sole discretion, satisfy said requirement with existing trees. Any owner of any Lot shall not remove any existing, living trees of six (6) inches in diameter without prior, written approval of the Committee. Each Lot upon which a residential dwelling is constructed shall have constructed thereon at the Owner's sole expense, a masonry mailbox enclosure and a street light fixture which shall conform as to size, style and location as determined by the Architectural Control Committee.

Section 5.03. Damage Liability. Each Owner shall be liable to the Association for all damage to the Common Area or other Association property that is sustained by reason of the negligence or wilful misconduct of that Owner or his or her family, guests, employees, tenants, and invitees to the extent that the damage is not covered by the casualty insurance obtained and maintained by the Association pursuant to Section 7.01 of this Declaration. Each Owner, by accepting his or her deed, agrees to provide insurance to the extent required by Section 7.05 of this Declaration.

Section 5.04. Exemption. Declarant shall be exempt from the restrictions 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.

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Section 5.05. Equitable Servitudes. The Covenants and Restrictions set forth in this Declaration shall be enforceable equitable servitudes and shall inure to the benefit of and bind all Owners. These servitudes may be enforced by any Owner or the City of Provo, Utah.

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 Architectural Control Committee, which shall restrict children from accessing swimming pools, open ponds and the Provo River, regardless of whether such swimming pools, ponds or the Provo River are located within the Development. This provision shall not apply to the Provo Bench Canal and Irrigation Company canal and the West Union Canal Company canal located within the Development. Owner's whose Lots contain easements for the canal companies listed above must comply with all common law and statutory easement requirements of the State of Utah, including but not limited to emergency and cleaning access (possibly ten feet on each side of the easement) by the canal companies. All fencing, whether safety fencing or otherwise, shall be constructed of wrought iron, brick, or a combination thereof. No fence shall be located nearer to the front lot line than: (a) 45 feet for dwellings which are set back 45 feet or less from the back of curb; or (b) 30 feet for dwellings which are set back 60 feet from the back of the curb. The City of Provo is hereby held harmless for any liability resulting from damage or injuries sustained by person's or property as a result of such drainage.

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

Section 5.08. Toilets. All toilets installed in a residential dwelling shall be of the "low-flow" type.

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

Section 5.10. Wetlands. No residential dwelling, garage, or other structure shall be constructed or otherwise situated upon an area within the Development which has been declared to be "Wetlands" by the United States Army Corps of Engineers. Each Owner shall be required to maintain and preserve in its natural state any portion of his Lot which has been so declared to be "Wetlands."

Section 5.11. 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 5.12. Compliance with Provisions of Geotechnical Study. All residential dwellings, garages or other structures to be constructed in the Development shall be constructed in compliance with the recommendations set forth in the Geotechnical Study prepared by Earthtec Testing and Engineering, a copy of which is attached hereto as Exhibit "C" and incorporated therein by this reference.

Section 5.13. Time Limit for Construction of Residential Dwelling. All residential dwellings shall be fully constructed within 18 months of the issuance by the City of Provo, Utah, of a building permit therefore.

Section 5.14. 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 Provo, Utah, of a Certificate of Occupancy for a residential dwelling constructed on a Lot.

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Section 5.15. Maintenance of Lots. All Lots (while vacant and after building construction is completed) shall be maintained in such a manner as to keep cleared or reasonably cut any type of vegetation which could become a fire hazard or becomes unsightly.

## ARTICLE VI. ARCHITECTURAL AND DESIGN CONTROL

Section 6.01. Architectural and Design Approval. No 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 Architectural Control Committee. The Committee shall review the plans and specifications within two 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. A complete landscape plan must be submitted with the plans and specifications of any proposed residential dwelling. Said landscape plan must be fully implemented within 18 months of approval of said plan.

Section 6.02. Dwelling Quality, Size and Set-Back Lines. All dwellings shall be constructed of quality materials and the workmanship thereof shall be of high quality. No pre-fabricated dwellings or mobile homes shall be allowed in the Development. There shall be no siding of any type used in constructing a dwelling. All roofing materials shall be constructed of wood or tiles made concrete, slate or copper. No asphalt roofing materials shall be allowed. All exterior surfaces of dwellings 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 percent (30%) 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 dwellings shall conform in all respects to the style of architecture commonly known as English Tudor, Georgian, Colonial or French. All dwellings shall contain a side-entry or angled (not parallel to the street) garage with the capacity to contain at least two automobiles. No dwelling shall contain a carport or anything similar to it. The ground floor area of any dwelling constructed on Lots containing 14,999 square feet or less, exclusive of garages and open porches, shall not be less than 2,600 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 living space exclusive of garage and open porches. The ground floor area of any dwelling constructed on Lots containing 15,000 square feet or more, exclusive of garages and open porches, shall not be less than 3,200 square feet for a one-story dwelling, nor less than 2,300 square feet for a dwelling of more than one-story; provided, however, that in any event, no two-story dwelling shall have less than 3,900 square feet of total living space exclusive of garage and open porches. The Committee may, in its absolute discretion, place a limit on the size of a dwelling. No dwelling shall be located nearer to the back of front curb line and the side street line than 30 feet. No dwelling shall be located nearer the side lot line than 15 feet on lots with widths greater than 120 feet and 10 feet for lots with widths less than 120 feet. No building shall be located nearer than 30 feet to any rear lot line, except those Lots which are located along



the Provo River in which case no building shall be located nearer than 100 feet from the high bank of the river. With respect to lots 36-47, major portions of these lots a within a flood plain area as shown on the Subdivision Map, therefore, no habitable floor elevation shall be placed below an elevation which is one (1) foot above the flood elevation shown on the Subdivision Map. The Committee may, in its absolute discretion, modify the side yard set-back requirements. All swimming pools or structures containing water shall be fenced in accordance with national standards for such pools or structures. The Committee may, in its absolute discretion, require that the increase in elevation from street to residential dwelling be at least 4 feet in order to provide consistent landscaping features. Any general contractor hired to construct a residential dwelling shall be approved by the Committee in writing. The Committee shall have the right, in its absolute discretion, to reroute any streams or waterways situated in the Development.

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

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- (a) The Declarant shall appoint all of the original members and all replacements until November 1, 1997, or until 90% of all Lots have been sold, whichever occurs first. Thereafter, the Board shall have the right to appoint all of the members of the Committee.
- (b) Members appointed to the Committee by the Board shall be Members of the Association. Members appointed to the Committee by the Declarant need not be Members of the Association.
- (c) The term of the initial appointees shall be one 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 carry out the obligations imposed upon it properly, unless otherwise directed by the Board.

Section 6.04. The Board of Directors. All decisions of the Architectural Control Committee are subject to review by the Board of Directors and may be appealed to the Board. The Committee shall notify the Board of all violations of this Article and of any noncompliance with its rulings or with the plans and specifications submitted to and approved by it. Thereafter, the Board shall take any actions it deems necessary, in accordance with the provisions of this Declaration.

## 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 Improvements in the Common Area. 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, 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 \$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 an amount that is at least equal to the estimated maximum of funds, including reserve funds, 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 150 percent 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 that occurs following the total or partial destruction of the Development and a decision not to rebuild.

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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 under 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 VIII 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. 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 7.06. Insurance Premiums. Insurance premiums for any insurance coverage obtained by the Association shall be included in the regular assessments. 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. DAMAGE OR DESTRUCTION

Section 8.01. Damage to Private Streets. All streets within the Property are private, not public streets, as defined under applicable Utah statutes and Provo City Ordinances. The Association waives any claim against Provo City Corporation for any and all damage to private streets within the Property.

Section 8.02. Duty to Restore and Replace. If any of the improvements in the Common Area are destroyed or damaged, the Association shall restore and replace the improvements, using the proceeds of insurance maintained pursuant to Article VII of this Declaration, subject to the provisions of this Article.

Section 8.03. Proceeds Justifying Automatic Restoration and Repair. If the proceeds of any insurance maintained pursuant to Article VII of this Declaration for reconstruction or repair of the Property are equal to at least 85 percent of the estimated cost of restoration and repair, the Board shall use

the insurance proceeds for that purpose, shall levy a special assessment to provide the necessary additional funds, and shall have the improvements promptly rebuilt, unless the Owners, by the vote or written consent of not less than 75 percent of the total voting power of each class of Owners, object to the restoration or repair work within 60 days of the damage or destruction.

**Section 8.04. Approval by Owners of Special Assessments for Certain Restorations and Repairs.** If the proceeds of any insurance maintained pursuant to Article VII of this Declaration for reconstruction or repair of the Property are less than 85 percent of the estimated cost of restoration and repair, any restoration and repair work must be authorized by the vote or written consent of Owners representing at least 75 percent of the total voting power of each class of Owners and beneficiaries of at least 75 percent of the First Mortgages on Lots in the Development. This authorization must be given within 60 days of the damage or destruction and must authorize the Board to levy a special assessment to provide the necessary funds over and above the amount of any insurance proceeds available for the work.

**Section 8.05. Ordering Reconstruction or Repair.** If reconstruction or repair work is to take place pursuant to this Article, the Board shall take the following steps:

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(a) Prepare the necessary documents, including an executed and acknowledged certificate stating that damage has occurred, describing it, identifying the improvement suffering the damage, the name of any insurer against whom claim is made, and the name of any insurance trustee, stating (if applicable) that the consent described in Section 8.03 has been obtained, and reciting that the certificate is recorded pursuant to this paragraph. That declaration shall be recorded with the Recorder of Utah County within 90 days from the date of the damage or destruction.

(b) Obtain firm bids (including the obligation to obtain a performance bond) from two or more responsible contractors to rebuild the Common Area in accordance with its original plans and specifications and, as soon as possible thereafter, call a special meeting of the voting Owners to consider the bids. If the Board fails to do so within 60 days after the casualty occurs, any Owner may obtain the bids and call and conduct the special meeting in the manner required by this paragraph. At the meeting, Owners representing at least 67 percent of the total voting power may elect to reject all of the bids and thus not to rebuild, or Owners representing at least 51 percent of the total voting power may elect to reject all bids requiring amounts exceeding the available insurance proceeds by more than \$500. Failure to reject all bids shall authorize the Board to accept the unrejected bid it considers most favorable. Failure to call the special meeting or to repair the casualty damage within 12 months from the date the damage occurred shall be deemed for all purposes to be a decision not to rebuild.

(c) If a bid is accepted, the Board shall let the contract to the successful bidder and distribute the insurance proceeds to the contractor as required by the contract.

(d) Levy a special assessment to make up any deficiency between the total insurance proceeds and the contract price for the repair or rebuilding, with the assessment and all insurance proceeds, whether or not subject to liens of mortgagees, to be used solely for the rebuilding. This assessment shall be apportioned equally to each Lot. If any Owners fail to pay the special assessment within 15 days after it is levied, the Board shall enforce the assessment in the manner described in Section 4.09 of this Declaration.

**Section 8.06. Election Not to Rebuild.** Upon an election not to rebuild, the Board, as soon as reasonably possible and as agent for the Owners, shall execute and record a certificate stating that the

Association shall not rebuild. The Board shall also sell the entire Common Area on terms acceptable to the Board and free from the effect of this Declaration, which shall terminate upon the sale. The net proceeds shall then be distributed to the Owners and their respective Mortgagees proportionately according to the respective fair market values of the Lots at the time of the destruction as determined by an Independent appraiser. That appraisal shall be performed by an independent appraiser who shall be selected by the Association and who shall be a member of, and apply the standards of, a nationally recognized appraiser organization.

All insurance proceeds available for restoration or repair shall be distributed to the Owners equally as follows: proceeds for damage or destruction to Lots shall be distributed to the Owners of the damaged Lots according to the relative fair market value of the Lots. This value shall be as of the date immediately preceding the damage or destruction, and shall be determined by an appraisal by an independent appraiser who shall be selected in the manner described above. Any proceeds from damage or destruction to the Common Area shall be distributed to the Owners equally.

Section 8.07. Minor Restoration and Repair Work. The Association shall order restoration or repair work without complying with the other provisions of this Article whenever the estimated cost of the work does not exceed \$18,000 for the Common Area. If insurance proceeds are unavailable or insufficient, the Association shall levy a special assessment for the cost of the work. The Assessment shall be levied in the manner described in Section 4.05 of this declaration.

#### ARTICLE IX. EMINENT DOMAIN<sup>ENT</sup> 6867 BK 3614 PG 500

Section 9.01. Sale to Condemning Authority. If a governmental agency proposes to condemn all or a portion of the Common Area, the Association may sell all or any portion of the Common Area to the condemning authority if fifty percent of the Owners and fifty percent of all institutional First mortgagees approve the sale in advance. Any such sale shall be made by the Association in the capacity of attorney-in-fact for the Owners, acting under an irrevocable power of attorney which each Owner grants to the Association by accepting a deed to a Lot. The sales price shall be any amount deemed reasonable by the Board.

Section 9.02. Distribution of Sales Proceeds. The proceeds of a sale conducted pursuant to Section 9.01 shall be distributed equally to the Owners and their Mortgagees, as their interests may appear.

Section 9.03. Taking and Condemnation Awards. If there is a taking by a governmental agency of all or any portion of the Common Area, the condemnation award shall be distributed to all Owners and their respective mortgagees in accordance with the court judgment, if any such judgment exists. In all other cases, the proceeds shall be distributed among the Owners and their respective Mortgagees as their interests may appear.

#### ARTICLE X. RIGHTS OF MORTGAGEES

Section 10.01. Warranty. Declarant hereby warrants that Mortgagees of Lots in the Development shall be entitled to the rights and guaranties set forth in this Article. No amendment of this Article shall affect the rights of the holder of any First Mortgage recorded prior to the recordation of the amendment who does not join in the execution of the amendment.

Section 10.02. Subordination. Notwithstanding any other provision of this Declaration, liens created under Section 4.09 of this Declaration upon any Lot shall be subject and subordinate to, and shall not affect the rights of the holder of, the indebtedness secured by any recorded First Mortgage upon such an interest made in good faith and for value, provided that any transfer of a Lot as the result of a foreclosure or exercise of a power of sale shall not relieve the new Owner from liability for assessments that become due after the transfer. Such a transfer shall extinguish, the lien of assessments that were due and payable prior to the transfer of the Lot.

Section 10.03. Inapplicability of Right of First Refusal. Should any of the Association's Governing Instruments provide for a "right of first refusal," this right shall not impair the rights of a First Mortgagee to:

- (a) Foreclose or take title to a Lot pursuant to the remedies provided in the Mortgage;
- (b) Accept a deed (or assignment) in lieu of foreclosure in the event of default by a Mortgagor; or
- (c) Interfere with a subsequent sale or lease of a Lot so acquired by the Mortgagee.

Section 10.04. Notice of Default. A First Mortgagee, upon request, shall be entitled to a written notification from the Association of any default in the performance by the Mortgagor of any obligation under the Association's Governing Instruments that is not cured with 60 days.

Section 10.05. Unpaid Assessments. Any First Mortgagee who obtains title to a Lot pursuant to the remedies provided in the Mortgage or foreclosure of the Mortgage shall not be liable for the Lot's unpaid assessments that accrue prior to the acquisition of title to the Lot by the Mortgagee.

Section 10.06. Mortgagee Approval of Material Amendments. Notwithstanding Article XII of this Declaration, any amendments governing any of the following shall require the prior written approval of at least 51 percent of the First Mortgagees and at least 67 percent of the total voting power of the Owners:

- (a) Voting;
- (b) Rights to use the Common Area;
- (c) Reserves and responsibility for maintenance, repair, and replacement of the Common Area;
- (d) Boundaries of any Lots unless such boundary change results in larger lots;
- (e) Owners' interests in the Common Area;
- (f) Convertibility of Lots into Common Area or Common Area in to Lots;
- (g) Leasing of Lots;
- (h) Establishment of self-management by the Association, when professional management has been previously required by any First Mortgagee or any insurer or governmental guarantor of a First Mortgage;
- (i) Annexation, addition, or withdrawal of real property to or from the Development;

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- (j) Assessments, assessment liens, or the subordination of these liens;
- (k) Casualty and liability insurance or fidelity bonds; or
- (l) Any provisions expressly benefitting First Mortgagees or insurers or governmental guarantors of First Mortgages.

Notwithstanding the foregoing, any First Mortgagee who receives a written request from the Board to approve a proposed amendment or amendments requiring consent under this Section who does not deliver a negative response to the Board within 30 days of the receipt of the request shall be deemed to have approved the proposed amendment or amendments.

Section 10.07. Mortgagee Approval of Other Actions. Unless at least 67 percent of the First Mortgagees (based upon one vote for each First Mortgage owned), or 67 percent of the Lot Owners other than Declarant, have given their prior written approval, the Association shall not be entitled to:

- (a) By act of omission, seek to abandon or terminate the Development;
- (b) Change the pro rata interest or obligations of any individual Lot for either of the following purposes, unless the change is due to an annexation pursuant to Article XI of this Declaration:
  - (1) Levying assessments or charges, or allocating distributions of hazard insurance proceeds or condemnation awards; or
  - (2) Determining the pro rata share of ownership of each Lot in the Common Area and the improvements thereon.
- (c) Partition or subdivide any Lot;
- (d) By act or omission, seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Area unless due to an annexation pursuant to Article XI of this Declaration (the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this clause);
- (e) Use hazard insurance proceeds for losses to any Development property (whether to Lots or to the Common Area) for other than the repair, replacement, or reconstruction of that property, except as provided by statute in case of substantial loss to the Lots and/or Common Area of the Development.

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Section 10.08. Liens. All taxes, assessments, and charges that may become liens prior to the First Mortgage under local law, shall relate only to the individual Lots and not to the Development as a whole.

Section 10.09. Priority. No provision of the Governing Instruments gives any Owner, or any other party, priority over any rights of the First Mortgagee of the Lot pursuant to its Mortgage in the case of a distribution to the Lot Owner of insurance proceeds or condemnation awards for losses to, or a taking of, all or a portion of a Lot or Lots and/or the Common Area.

Section 10.10. Reserve Fund. Association assessments shall be large enough to provide for an adequate reserve fund for maintenance, repairs, and replacement of those common elements that must be replaced on a periodic basis. The reserve fund shall be funded by the regular assessments rather than by special assessments.

Section 10.11. Management. Any agreement for professional management of the Development shall not exceed three years and shall provide that either party may terminate the agreement, with or without cause and without the imposition of a termination fee, on 90 days written notice. The approval of holders of at least 75 percent of First Mortgages shall be obtained before the Association terminates a professional management agreement.

Section 10.12. Right to Inspect Books and Records. Institutional First Mortgagees, upon written request, shall have the right to (1) examine the books and records of the Association during normal business hours and (2) require the submission of any financial data furnished to the Owners by the Association.

## ARTICLE XI. ANNEXATION OF ADDITIONAL PROPERTY

Section 11.01. Addition by Declarant. Declarant shall have the right to add all or any property to the Development. 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.

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Section 11.02. Rights and Obligations of Owners of 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. The commencement of assessments on the annexed real property shall be governed by Section 4.07 of this Declaration.

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 (other than any buildings or Exclusive Use Common Areas) 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

Section 12.01. Grant of Easements. 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 ENT 6867 BK 3614 PG 504

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 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 67 percent 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 67 percent 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 to be taken under that clause or provision.

An amendment becomes effective after (1) the approval of the required percentage of Owners has been given, (2) 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 (3) that writing has been recorded in the county in which this Development is located.

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 50 percent) of the votes in the Association or of Owners having a specified percentage (exceeding 50 percent) of the votes in more than one class (a "supermajority"), and more than 50 percent 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 40 years from the date of execution. Thereafter, it shall be automatically extended for successive periods of 5 years, until the membership 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.

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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 provision of this Declaration.

Section 14.06. Limitation of Liability. The liability of any Owner for performance of any of the provisions of this Declaration shall terminate upon sale, transfer, assignment, or other divestment of the Owner's entire interest in his or her Lot with respect to obligation arising from and after the date of the divestment.

Section 14.07. 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 14.08. Future Dedication of Common Area. No portion or portions of the Common Area have been dedicated to the City of Provo, Utah, for roadway or sidewalk purposes. No portion or portions of the Common Area may be dedicated to said City of Provo, Utah, in the future unless and until all development standard requirements relating to road width, access, etc. are satisfied.

Section 14.09. Number and Headings. As used in this Declaration, the singular shall include the plural, unless the context requires the contrary. The headings are not a part of this Declaration, and shall not affect the interpretation of any provision.

EXECUTED at Provo, Utah on this 30<sup>th</sup> day of January, 1995.

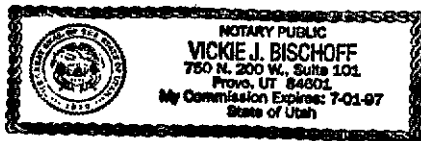
BTS INVESTMENTS, INC.

  
R. Scott McQuarrie, President

STATE OF UTAH  
COUNTY OF UTAH ss.

ENT 6867 BK 3614 PG 506

On the 30th day of January, 1995, personally appeared before me R. SCOTT McQUARRIE, who being by me duly sworn did say, that he, is the President of BTS INVESTMENTS, INC., and that the within and foregoing instrument was signed in behalf of said corporation by authority of a resolution of its board of directors and did duly acknowledge to me that said corporation executed the same and that the seal affixed is the seal of said corporation.



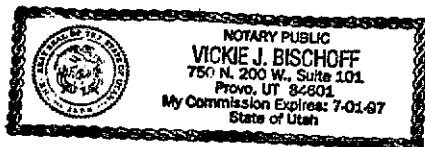
Vickie J. Bischoff  
NOTARY PUBLIC

FAR WEST BANK

[Signature]  
BY: Sr Vice Pres.  
Its: \_\_\_\_\_


STATE OF UTAH  
COUNTY OF UTAH ss.

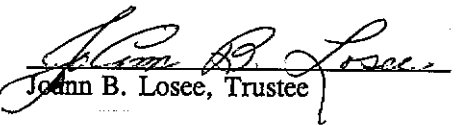
On the 30th day of January, 1995, personally appeared before me DeVar S. Thatcher, who being by me duly sworn did say, that he, is the Senior Vice President of FAR WEST BANK, and that the within and foregoing instrument was signed in behalf of said corporation by authority of a resolution of its board of directors and did duly acknowledge to me that said corporation executed the same and that the seal affixed is the seal of said corporation.



Vickie J. Bischoff  
NOTARY PUBLIC

THE RICHARD D. & JOANN B. LOSEE  
CHARITABLE REMAINDER TRUST  
U/A/D 3/23/94

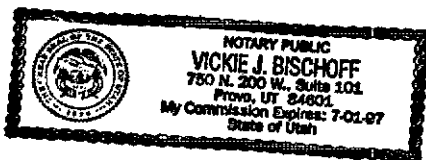
 TRUSTEE  
Richard D. Losee, Trustee

 Trustee  
Joann B. Losee, Trustee

ENT 6867 BK 3614 PG 507

STATE OF UTAH  
COUNTY OF UTAH ss.

On the 30<sup>th</sup> day of January, 1995, personally appeared before me RICHARD D. LOSEE & JOANN B. LOSEE, who being by me duly sworn did say, that they are trustees of the said trust described above, that they duly executed the foregoing instrument in the name of said trust, and that they are duly authorized to sign the same; and they duly acknowledged to me that they executed the same as the act and deed of said trust, for the purposes mentioned therein.



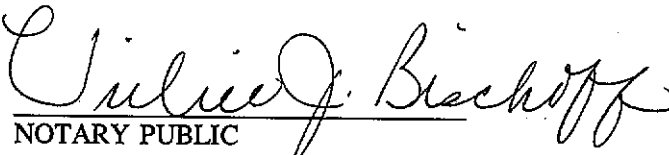
  
NOTARY PUBLIC

EXHIBIT "A"

**BOUNDARY DESCRIPTION**

COMMENCING AT A POINT LOCATED SOUTH 0-44-19 EAST 840.09 FEET AND WEST 2178.86 FEET FROM THE EAST 1/4 CORNER OF SECTION 13, SECTION 6, TOWNSHIP 2 SOUTH, RANGE EAST, SALT LAKE BASE AND MERIDIAN; THENCE

COURSE	DISTANCE	REMARKS
S 01-01-29 E	155.96'	
S 88-58-31 W	388.37'	
S 01-01-29 E	455.88'	
N 89-45-34 E	270.53'	
N 88-51-05 E	82.63'	
N 88-30-04 E	529.07'	
S 09-24-33 W	277.36'	
S 88-05-57 E	22.27'	
S 09-00-00 W	167.72'	
S 34-45-00 W	265.00'	
S 47-00-00 W	670.00'	
S 59-45-00 W	330.00'	
S 55-00-00 W	148.01'	
S 89-23-14 W	527.98'	
N 02-57-46 W	68.72'	
N 16-37-46 W	115.77'	
CONTINUED TO THE LEFT		

BASIS OF BEARING - UTAH STATE PLANE COORDINATE SYSTEM

ENT 6867 BK 3614 PG 508

BOUNDARY DESCRIPTION CONTINUED FROM RIGHT		
S 88-46-42 W	90.49'	
N 02-11-46 W	74.35'	
N 04-47-44 E	164.22'	
N 22-37-14 E	244.90'	
N 04-50-14 E	325.55'	
N 13-42-57 E	71.87'	
along the arc	137.73'	to the right (chd brs S 87-22-09 E 98.13' R=50.00')
along the arc	17.03'	to the left (chd brs N 88-50-09 E 11.70' R=5.90')
N 06-07-32 E	224.50'	
along the arc	135.47'	to the right (chd brs N 83-44-39 E 97.67' R=50.00')
N 71-24-07 E	29.39'	
N 16-17-55 W	23.21'	
N 03-00-13 E	56.10'	
N 18-58-03 E	78.83'	
N 27-52-03 E	107.50'	
N 33-52-03 E	152.00'	
N 01-58-57 W	220.00'	
N 10-53-03 E	94.43'	
N 88-58-28 E	671.81'	TO THE POINT OF BEGINNING.
AREA = 45.82 ACRES		