

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

Pelican Bay Subdivision, Plat "A"

ENT 69236;2000 PG 1 of 34
RANDALL A. COVINGTON
UTAH COUNTY RECORDER
2000 Sep 01 11:53 am FEE 183.00 BY 95
RECORDED FOR CENTURY TITLE

This declaration of Covenants, Conditions, and Restrictions for Pelican Bay, Plat 'A' (the "Declaration") is made this 1st day of September, 2000 by DTCF Investments LC (the "Declarant"). The Property described on the Plat is subject to the provisions of this Declaration, and shall be held, transferred, sold, conveyed, and assigned in accordance with and subject to the provisions herein. Said Property is located in Utah County, State of Utah, and is more particularly described as:

Pelican Bay Subdivision, Plat "A"

ARTICLE I

DEFINITIONS

Unless otherwise defined, the following words and phrases when used in this Declaration shall have the meanings set forth in this Article.

1.1 "Annual Assessment" means the assessments levied against each Lot, and the Owner thereof, pursuant to Section 8.2 of this Declaration.

1.2 "Architectural Committee" means the committee of the Association to be created pursuant to Section 7.10 of this Declaration.

1.3 "Architectural Committee Rules" means the rules and guidelines adopted by Architectural Committee pursuant to Section 7.10 of this Declaration.

1.4 "Areas of Association Responsibility" means (i) all Common Area, if any; (ii) all land, and the Improvements situated thereon, which the Association is obligated to maintain, repair, and replace pursuant to the terms of the Declaration or the terms of another recorded document executed by the Association; (iii) all real property, and the Improvements situated thereon, within the Project located within dedicated rights-of-way with respect to which the State of Utah or any county or municipality has not accepted responsibility for the maintenance thereof, but only until such time as the State of Utah or any county or municipality has accepted all responsibility for the maintenance, repair, and replacement of such areas; and (iv) the Irrigation system.

1.5 "Articles" means the Articles of Incorporation of the Association, as amended from time to time.

1.6 "Assessment" means an Annual Assessment or Special Assessment.

1.7 "Assessment Lien" means the lien created and imposed by Article 9 of this Declaration.

1.8 "Assessment Period" means the period set forth in Section 9.6 of this Declaration.

1.9 "Association" means the Utah non-profit corporation to be organized by the Declarant to administer and enforce the Project Documents and to exercise the rights, powers, and duties set forth therein, and its successors and assigns. Declarant intends to incorporate the Association under the name of "Pelican Bay, Plat 'A' Homeowners Association" but if such name is not available, Declarant reserves the right to incorporate the Association under such other name as the Declarant deems appropriate.

1.10 "Association Rules" means the rules adopted by the Board pursuant to Section 8.3 of this Declaration, as amended from time to time.

1.11 "Board" means the Board of Trustees of the Association.

1.12 "Bylaws" means the Bylaws of the Association, as amended from time to time.

1.13 "Common Expenses" means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

1.14 "Declarant" means DTCF Investments LC, and any Person to whom it may expressly assign any or all of its rights under this Declaration by an instrument recorded with the County Recorder of Utah County, Utah.

1.15 "Declaration" means this Declaration of Covenants, Conditions, and Restrictions, as amended from time to time.

1.16 "Developer" means any Owner of one or more Lots who is engaged in residential land development and the marketing and sale of such Lots, or Lots together with Residential Units constructed thereon, to the public.

1.17 "First Mortgage" means any mortgage or deed of trust on a Lot which has priority over all other mortgages and deeds of trust on the same Lot.

- 1.18 "First Mortgagee" means the holder or beneficiary of any First Mortgage.
- 1.19 "Improvement" means any building, fence, wall, or other structure or any swimming pool, road, driveway, parking area or any trees, plants, shrubs, grass, or other landscaping improvements of every type and kind.
- 1.20 "Lessee" means the lessee or tenant under a lease, oral or written, of any Lot including an assignee of a lease.
- 1.21 "Lot" means a portion of the Project intended for independent ownership and use and designated as a Lot on the Plat and, where the context indicates or requires, shall include any Residential Unit, building, structure, or other Improvements situated on the Lot.
- 1.22 "Maintenance Standard" means the standard of maintenance of Improvements established from time to time by the Board or, in the absence of any standard established by the Board, the standard of maintenance of Improvements generally prevailing throughout the Project.
- 1.23 "Member" means any person who is a member of the Association.
- 1.24 "Owner" means the record Owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Lot. Owner shall not include Persons having an interest in a Lot merely as security for the performance of an obligation or a Lessee. Owner shall not include a purchaser under a purchase contract and receipt, escrow instruction or similar executory contracts which are intended to control the rights and obligations of the parties to the executory contracts pending the closing of a sale or purchase transaction. In the case of Lots the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the trust property shall be deemed to be the Owner.
- 1.25 "Party Fence" means fences which may be constructed upon the dividing line between Lots, or near or adjacent to the dividing line because of minor encroachments.
- 1.26 "Person" means a natural person, corporation, business trust, estate, trust partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.
- 1.27 "Plat" means the plat map of Pelican Bay, Plat 'A' recorded on _____, 2000, entry no. _____, Plat Map no. _____ in the records of Utah County, Utah, and all amendments, supplements, and corrections thereto.
- 1.28 "Property" or "Project" means the real property described on the Final Plat.

1.29 "Project Documents" means this Declaration, the Articles, the Bylaws, the Association Rules and the Architectural Committee Rules.

1.30 "Purchaser" means any Person, other than the Declarant, who by means of voluntary transfer becomes the owner of a Lot, except for: (I) a Person who purchases a Lot and then leases it to the Declarant for use as a model in connection with the sale or lease of other Lots; or (ii) a Person, who, in addition to purchasing a Lot, is assigned any or all of the Declarant's rights under this Declaration.

1.31 "Recording" means placing an instrument of public record in the office of the County Recorder of Utah County, Utah and "Recorded" means having been so placed of public record.

1.32 "Resident" means each individual occupying or residing in any residential unit.

1.33 "Residential Unit" means any building, or portion of a building, situated upon a Lot and designed and intended for independent ownership and for use and occupancy as a residence.

1.34 "Single Family" means a group of one or more persons each related to the other by blood, marriage, or legal adoption, or a group of not more than three (3) persons not all so related, who maintain a common household in a Residential Unit.

1.35 "Special Assessment" means any assessment levied and assessed pursuant to Section 9.5 of this Declaration.

1.36 "Visible From Neighboring Property" means, with respect to any given object, that such object is or would be visible to a person six feet tall, standing at ground level on any part of any adjoining Lot.

ARTICLE 2

PLAN OF DEVELOPMENT

2.1 Property Initially Subject to the Declaration. This Declaration is being recorded to establish a general plan for the development, sale, lease, and use of the Project in order to protect and enhance the value and desirability of the Project. The Declarant, as the

Owner of the Property, declares that all of the property within the Project shall be held, sold, and conveyed subject to this Declaration. By acceptance of a deed or by acquiring any interest in any of the property subject to this Declaration, each person or entity, for himself, or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all the provisions, restrictions, covenants, rules, and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such person by so doing thereby acknowledges that this sets forth a general scheme for the development, sale, lease, and use of the Property and hereby evidences his interest that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, lessees, and transferees thereof. Furthermore, each such person fully understands and acknowledges that his Declaration shall be mutually beneficial, prohibitive, and enforceable by the Association and all Owners. The Declarant, and their successors, assigns, and grantees covenant and agree that the Lots and the membership in the Association and the other rights created by this Declaration shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Lot even though the description in the instrument of conveyance or encumbrance may refer only to the Lot.

2.2 Disclaimer of Representations. Except as set forth in this Declaration, the Declarant makes no representations or warranties whatsoever that: (I) the Project will be completed in accordance with the plans for the Project as they exist on the date this Declaration is recorded; (ii) any Property subject to this Declaration will be committed to or developed for a particular use or for any use; (iii) the use of any Property subject to this Declaration will not be changed in the future.

ARTICLE 3

BUILDING AND LAND USE

3.1 Residential Use. Lots of Pelican Bay, Plat 'A' shall be Single Family Residential Lots, and there may be erected on any one Lot not more than one Single Family Residence plus such accessory and auxiliary garages and storage sheds as are incidental to Single Family Residential use. No other buildings shall be erected on any of said Lots, nor shall any of said Lots or any part thereof be used for any business purposes whatsoever except as provided in Section 6.1 below.

3.2 Lot Grading. Grading on any Lot shall be done in strict conformity to the requirements set forth on the Final Plat. No Lot shall obstruct the flow of water coming off dedicated streets onto the Lot.

3.3 Parking. Automobiles of the private passenger class and trucks of the pick-up class and horse trailers may be parked on the side of any Lots, provided that any such parking shall comply with the same set back requirements as the residential dwellings. Campers, larger trucks than pick-ups, equipment, and boats, may be parked in the back of any Lot, provided that any such parking area shall be attractively screened or concealed from neighboring Lots, roads or streets, and then only with the prior approval of the Architectural Committee. Motor vehicles which are under repair or not in operating condition shall not be placed or permitted to remain on any street, or any portion of any Lot or Lots, in Pelican Bay, Plat 'A', unless it is within an enclosed garage structure.

3.4 General Upkeep. Yard equipment, garbage cans, building supplies, and service yards shall be kept screened by adequate planting or fencing so as to conceal them from View From Neighboring Lots and streets. All rubbish, trash or garbage shall be removed from the premises of all Lots and shall not be allowed to accumulate thereon. All Lots shall be kept reasonably clean of weeds and trash, so as to not cause an unsightly or dangerous condition.

3.5 Sewage. All bathrooms, toilets or sanitary conveniences shall be connected to the Town sewer system. There shall not be allowed any outside portable lavatories, outside toilets or open plumbing.

3.6 Tanks. No elevated tanks of any kind shall be erected, placed or permitted on any Lots.

3.7 Animal Privileges. Subject to the laws, ordinances, health codes, rules, and regulations of the State of Utah, Utah County, and the Town of Saratoga Springs animals are allowed. However no more than 2 dogs and 2 cats per single family residence are permitted.

All animals, including dogs, must be kept within a fenced area, encaged or otherwise controlled and not be allowed to wander off or fly about. There shall be no commercial breeding, raising, and/or boarding of any animals.

3.8 Construction Permitted. All structures erected in Pelican Bay, Plat 'A', must be of new construction. The walls of all residences shall be of brick, rock or stucco construction. At least 50 percent of the front of the residence must be rock or brick.

3.9 Minimum Living Area. All Single Family residences constructed on lot numbers: 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15,16,17,18,19,20,21,22,23,24,25,26,27,28,29, 30,31,32,33,34,35,92,93,94,95,96,97,98,99,100,101,102,103,-----within Pelican Bay,

Plat 'A' must contain a minimum living area of 1,200 square feet if a one story, 1,800 square feet if split level or two story, exclusive of open porches, pergolas, or attached garages. Residences built on lots: 36,37,38,39,40,41,42,43,44,45,46,47,48,49,50,51,52,53,54,71,72, 73,74,75,76,85,86,87,88,89,90,-----within Pelican Bay, Plat 'A' must contain a minimum living area of 1400 square feet if a one story, 2,000 square feet if split level or two story, exclusive of open porches, pergolas, or attached garages. Residences constructed on lot numbers: 55,56,57,58,59,60,61,62,63,64,65,66,67,68,69,70,77,78,79,80,81,82,83,84,91-----within Pelican Bay, Plat 'A' must contain a minimum living area of 1,600 square feet if a one story, 2,200 square feet if a split level or two story, exclusive of open porches, pergolas, or attached garages.

3.10 Garages. All Single Family residences constructed within Pelican Bay, Plat 'A', shall be constructed with a minimum of a two car garage enclosed with garage doors. No carports shall be allowed.

3.11 Plan Approval. Except as provided herein, no Single Family residence, garage, shed, fence, or other structure shall be constructed or moved within Pelican Bay, Plat 'A', without having first obtained the prior approval of design, location, and materials by Pelican Bay, Plat 'A', Architectural Committee as described herein. Outbuildings are encouraged to be of the same construction as the residence.

Two copies of the complete plans and specifications of any proposed structure must be submitted to the Architectural Committee. At least one copy of said plans and specifications shall be retained by the Architectural Committee.

In the event a written request for such approval together with any fee payable under Section 5.6 below and complete plans and specifications are not acted upon within 15 days from the receipt thereof by said Committee, then such approval shall be deemed given, provided, however, that no structure may be constructed pursuant to this paragraph which conflicts with any specifically delineated restrictions contained herein.

3.12 Commencement of Construction. No garage, or similar structure shall be erected on any Lot until construction of the primary Single Family residence (complying with these restrictions) shall have been commenced on said Lot. Once construction has been commenced on the residence, it shall be completed within 9 months.

3.13 Structures and Setbacks. No garage, shed, mobile home, motor vehicle, or any temporary structure of any nature may be used temporarily or permanently as a residence on any Lot. All structures including, without limitation, permanent or temporary structures, garages and sheds located on all Lots must be at least thirty (30) feet from the front of the property line and must be in compliance with the codes set forth by the Town of Saratoga Springs.

3.14 Fenced Areas. A fence designed or used for the containment small animals

may be built and maintained. This fence can be chain link, if it is interior. If it is used to define the lot perimeter or used to define the back yard from the front, it must be constructed of white vinyl. No fences can be built beyond the front line of the residence. All fences must be built to match.

3.15 Fencing Materials. All fences other than those described in Section 3.14 above used for the shelter or containment of animals as stated in Section 3.14 must be constructed of white vinyl. Chain link fences may be used to contain small animals if used in conjunction with interior fencing. No chain link fence shall be used as, or in conjunction with, any perimeter fence. No wooden posts or fencing of any kind or barbed or strand wire may be used.

3.16 Party Fence. The rights and duties of Owners with respect to a Party Fence between Lots shall be as follows:

3.16.1 To the extent an Owner or the Association constructs a Party Fence, it shall be the obligation of all Owners whose Lots adjoin such Party Fence to construct the Party Fence at their joint expense, such expenses to be allocated among the Owners in accordance with the frontage of their Lots on the Party Fence.

3.16.2 The Owners of contiguous Lots who have a Party Fence shall both equally have the right to use such fence, provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner.

3.16.3 In the event that any Party Fence is damaged or destroyed through the act of an Owner or any of his tenants, agents, guests, or members of his family (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner to rebuild and repair the Party Fence without cost to the Owner of the adjoining Lot. Any dispute over an Owner's liability for such damage shall be resolved as provided in Section 3.16.6 below, but any liability imposed on an Owner hereunder shall not prevent the Owner from seeking indemnity therefore from the persons causing such damage.

3.16.4 In the event any Party Fence is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), other than by the act of an adjoining Owner, his tenants, agents, guests or family, it shall be the obligation of all owners whose Lots adjoin such Party Fence to repair said Fence at their joint expense, such expense to be allocated among the Owners in accordance with the frontage of their Lots on the Party Fence.

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

3.16.6 In the event of a dispute between Owners with respect to the construction, repair, or rebuilding of a Party Fence, or with respect to the sharing of the cost

thereof, such adjoining Owners shall submit the dispute to the Architectural Committee, the decision of which shall be binding.

3.17 Landscaping. Front yard must be fully landscaped within 9 months of occupancy. Sod is required for the front yard. Sprinkler systems are required. Back yard must be fully landscaped within 18 months of occupancy.

3.18 Exterior Lighting. All residences must have a lamppost in the front yard.

3.19 Shingles. Architectural 25 yr. Grade shingles are required.

ARTICLE 4

ARCHITECTURAL CONTROL

4.1 Excavating or Grading. No excavation or grading work shall be performed on any Lot without prior written approval of the Architectural Committee. The grading of any Lot must conform to the requirements set forth in Section 3.2.

4.2 Lot Improvements. No Improvement which would be Visible From Neighboring Property shall be constructed or installed on any Lot without the prior written approval of the Architectural Committee. No addition, alteration, repair, change or other work which in any way alters the exterior appearance, including but without limitation, the exterior color scheme, of any part of a Lot, or any Improvements located thereon which are Visible From Neighboring Property, from their appearance on the date this Declaration is Recorded shall be made or done without the prior written approval of the Architectural Committee. Accordingly, approval of the Architectural Committee is not required for the construction, installation, addition, alteration, or repair of any Improvement situated in the back yard of a Lot unless such Improvement is or would be Visible From Neighboring Property. If such Improvement would be Visible From Neighboring Property, Owner shall submit to the Architectural Committee a written request for approval specifying in-detail the nature and extent of the addition, alteration, repair, change or other work which the Owner desires to perform. Any Owner requesting the approval of the Architectural Committee shall also submit to the Architectural Committee any additional information, plans, and specifications which the Architectural Committee may request.

In the event that the Architectural Committee fails to approve or disapprove an application for approval within thirty (30) days after the application, together with any fee payable pursuant to Section 5.6 of this Declaration and all supporting information, plans, and specifications requested by the Architectural Committee, have been submitted to the Architectural Committee, approval shall be deemed given and this section will be deemed to have been complied with by the Owner who had requested approval of such plans. The approval of the Architectural Committee of any construction, installation, addition, alteration, repair, change, or other work pursuant to this Section shall not be deemed a waiver of the Architectural Committee's right to withhold approval of any similar construction, installation, addition, alteration, repair, change or other work subsequently submitted for approval.

4.3 Disapproval of Plans. The Architectural Committee may disapprove plans and specifications for any construction, installation, addition, alteration, repair, change or other work which must be approved by the Architectural Committee pursuant to this Section if the Architectural Committee determines, in its sole and absolute discretion, that: (i) the proposed construction, installation, addition, alteration, repair, change, or other work would violate any provision of this Declaration; (ii) the proposed construction, installation, addition, alteration, repair, change, or other work does not comply with any Architectural Committee rule; (iii) the proposed construction, installation, addition, alteration, repair, change, or other work is not in harmony with existing Improvements in the Project or with Improvements previously approved by the Architectural Committee but not yet constructed; (iv) the proposed construction, installation, addition, alteration, repair, change, or other work is not aesthetically acceptable; (v) the proposed construction, installation, addition, alteration, repair, change or other work is otherwise not in accord with the general plan of development for the Project.

4.4 Plan Approval. Upon receipt of approval from the Architectural Committee for construction, installation, addition, alteration, repair, change or other work, the Owner who had requested such approval shall proceed to perform, construct, or make the addition, alteration, repair, change or other work approved by the Architectural Committee as soon as practicable and within such time as may be prescribed by the Architectural Committee.

4.5 Change in Plan Approval. Any change, deletion or addition to the plans and specifications approved by the Architectural Committee must be approved in writing by the Architectural Committee.

4.6 Fees. The Architectural Committee shall have the right to charge a fee for reviewing requests of any construction, installation, alteration, addition, repair, change or other work pursuant to this Section, which fee shall be payable at the time the application for approval is submitted to the Architectural Committee.

4.7 Declarant Improvements. The provisions of this section do not apply to, and approval of the Architectural Committee shall not be required for, the construction, erection, installation, addition, alteration, repair, change or replacement of any Improvements made by or

4.8 Federal, State, and Local Taxes. The approval required of the Architectural Committee pursuant to this Section shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state, or local law, statute, ordinance, rule, or regulation.

4.9 Warranty. The approval by the Architectural Committee of any construction, installation, addition, alteration, repair, change or other work pursuant to this Section shall not be deemed a warranty or representation by the Architectural Committee as to the quality of such construction, installation, addition, alteration, repair, change or other work or that such construction, installation, addition, alteration, repair, change or other work conforms to any applicable building codes or other federal, state or local law, statute, ordinance, rule or regulation.

4.10 Security for Approval of Plans. The Architectural Committee may condition its approval of plans and specifications upon the agreement by the Owner submitting such plans and specifications to furnish the Association a bond or other security acceptable to the Architectural Committee in an amount determined by the Architectural Committee to be reasonably sufficient to: (i) assure the completion of the proposed Improvements or the availability of funds adequate to remedy any nuisance or unsightly conditions occurring as a result of the partial completion of such Improvements, and (ii) to repair any damage which might be caused to any Area of Association Responsibility as a result of such work. Any such bond shall be released or security shall be fully refundable to the Owner upon: (i) the completion of the Improvements in accordance with the plans and specifications approved by the Architectural Committee; and (ii) the Owner's written request to the Architectural Committee, provided that there is no damage caused to an Area of Association Responsibility by the Owner or agents or contractors.

4.11 Future Costs. If the plans and specifications pertain to an Improvement which is within an Area of Association Responsibility so that the Association is responsible for the maintenance, repair and replacement of such Improvement, the Architectural Committee may condition its approval of the plans and specification for the proposed constructions, installation, addition, alteration, repair, change or other work with respect to the Improvement on the agreement of the Owner to reimburse the Association for the future cost of the repair, maintenance or replacement of such Improvement.

4.12 Liability. Neither the Architectural Committee nor any member thereof, shall be liable to any Owner, or to any other party for any damage, loss or prejudice suffered or claimed on account of:

4.12.1 Approval or disapproval of any plans, drawings, or specifications, whether or not defective.

4.12.2 The construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications.

4.12.3 The development of any Property within Pelican Bay, Plat 'A'

4.12.4 The execution and filing of any estoppel certificate, whether or not the facts therein are correct; provided, however, that with respect to the liability of a member, such member has acted in good faith on the basis of such information as may be possessed by him.

Without any way of limiting the generality of any of the foregoing provisions of this section, the Architectural Committee, or any member thereof, may, but is not required to, consult with, or hear the views of any Owner with respect to any plans, drawings, specifications, or any other proposal submitted to the Architectural Committee for review.

ARTICLE 5

USE RESTRICTIONS

5.1 **Commercial Activities.** No hotel, store, multi-family dwelling, boarding house, or any other type of business of any kind, no care treatment of the physically or mentally sick or disabled, nor any commercial facility shall be permitted on the premises of any Lot, or any part thereof, and no business of any kind or character whatsoever shall be conducted in or from any residence or building on any said Lots. The foregoing notwithstanding, an Owner or resident on a Lot may use a portion of a single-family house located on a Lot for home office use to conduct a trade or business if the house is primarily used for residential purposes and the trade or business activity: (a) is merely incidental to the residential use of the Lot; (b) consists of typical office uses only and is used only by residents of the house; (c) does not include any other commercial uses, including, without limitation, manufacturing, production, repairs, warehousing or boarding; (d) is not apparent or detectable by sight, sound or smell from the exterior of the house; (e) conforms to all zoning requirements for the Project and all other applicable laws, ordinances, rules, and regulations; (f) does not increase the liability of casualty insurance obligation or premium of the Association; and (g) is consistent with the residential character of the Project and does not constitute a nuisance or a hazardous or offensive use, including, without limitation, excessive or unusual traffic or parking of vehicles in the vicinity of any Lot as may be determined by the Board of the Association, in its sole and absolute judgment and discretion.

5.2 **Signs.** No advertising signs, billboards, unsightly objects, or nuisances shall be erected, placed, or permitted to remain on any of said Lots, nor shall the premises be used in any way for any purposes which may endanger the health or unreasonably disturb the holder of

than twenty-four inches (24") by twenty-four inches (24") may be placed on any Lot; provided however, the Declarant, its successors, or its agent may erect or place signs within Pelican Bay, Plat 'A', as it deems appropriate or necessary to reasonably permit the promotion and sale of Lots within the subdivision.

5.3 Utility Service. No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone and radio signals, shall be erected, placed, or maintained anywhere in or upon any Lot or other property unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under, or on buildings or other structures approved by the Architectural Committee. No provision of this Declaration shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Architectural Committee.

5.4 Trash Containers and Collections. No garbage or trash shall be placed or kept on any Property within Pelican Bay, Plat 'A', except in covered containers. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make the same available for collection and then, only for the shortest time reasonably necessary to effect such collection.

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

5.6 Burning and Incinerators. No open fires or burning shall be permitted on any Lot at any time and no incinerators or like equipment shall be placed, allowed, or maintained upon any Lot. The foregoing shall not be deemed to preclude the use, in customary fashion, of outdoor residential barbecues or grills.

5.7 Antennas. No antenna or broadcasting tower shall be erected on any of the said Lots in Pelican Bay, Plat 'A', except that a television antenna may be maintained so long as said antenna is attached to the roof of a residential dwelling and does not rise more than eight (8) feet above the roof of said dwelling. No antenna or other device for the transmission or reception of radio signals or any other form of electromagnetic radiation including, without limitation,

of radio signals or any other form of electromagnetic radiation including, without limitation, satellite or microwave dishes, shall be erected, used or maintained on any Lot without the prior written approval of the Architectural Committee.

5.8 Variances. The Architectural Committee may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Article 6 if the Architectural Committee determines in its discretion that (i) a restriction would create an unreasonable hardship or burden on an Owner, Lessee, or Resident or a change of circumstances since the Recording of this Declaration has rendered such restrictions obsolete and (ii) that the activity permitted under the variance will not have any substantial adverse effect on the Owners, Lessees, and Residents of the Project and is consistent with the high quality of life intended for the Residents of the Project.

5.9 Garages and Driveways. Garages shall be used only for the parking of vehicles and shall not be used or converted for living or recreational activities without the prior written approval of the Architectural Committee.

5.10 Rights of the Developer. Notwithstanding any other provisions in this Declaration to the contrary, a Developer shall have the right to maintain model homes on Lots owned by the Developer and to construct and maintain parking areas for the purpose of accommodating persons visiting such model homes provided the construction, operation, and maintenance of such model homes otherwise complies with all provisions of this Declaration. Any homes constructed as a model home shall cease to be used as a model home at any time the Developer is not actually engaged in the construction and sale of Residential Units in the Project, and no Residential Unit shall be used as a model home for the sale of Residential Units not located in the project. Notwithstanding any other provision in this Declaration to the contrary, a Developer may store supplies of brick, block, lumber, and other building materials on the Lot owned by the Developer. In addition, normal construction activities of the Developer in connection with the construction of Improvements shall not be considered a nuisance or otherwise prohibited by this Declaration. A Developer constructing Improvements on Lots shall keep the Lots in a clean, safe and neat condition free of weeds, trash and debris.

ARTICLE 6

EASEMENTS

6.1 Utility easements. There is hereby created an easement upon, across, over and under the Lots for reasonable ingress, egress, installation, replacing, repairing, or maintaining of all utilities, including, but not limited to, gas, water, sewer, irrigation water, telephone, cable

providing utility company to erect and maintain the necessary equipment on the Lots, but no sewers, electrical lines, water lines, or other utility or service lines maybe installed or located on the Lots except as initially designed, approved, and constructed by the Declarant or as approved by the Board.

6.2 Declarant's Use for Sales and Leasing Purposes. Declarant shall have the right and an easement to maintain sales or leasing offices, management offices, and models throughout the Lots owned by the Declarant and to maintain one or more advertising, identification, or directional signs on the Lots owned by the Declarant while the Declarant is selling the Lots. Developer shall have the right to maintain one or more advertising, identification, or directional signs on the Lots owned by the Developers, provided such signs comply with all applicable municipal requirements. Declarant reserves the right to place models, management offices, and sales and leasing offices on any Lots owned by the Declarant in such number, of such size, and in such locations as Declarant deems appropriate. In the event of any conflict or inconsistency between this Section and any other provision of this Declaration, this Section shall control.

6.3 Declarant's Easements. Declarant shall have the right and an easement on and over Areas of Association Responsibility to construct all Improvements the Declarant may deem necessary and to use the Areas of Association Responsibility and any Lots and other property owned by Declarant for construction or renovation related purposes including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of the work respecting the Project. The Declarant shall have the right and easement upon, over and through the Areas of Association Responsibility as may be reasonably necessary for the purpose of discharging its obligations or exercising the rights granted to or reserved by the Declarant by this Declaration. In the Event of any conflict or inconsistency between this Section and any other provision of this Declaration, this Section shall control.

6.4 Easement in Favor of Association. The Lots are hereby made subject to the following easements in favor of the Association and its director, officers, agents, employees and independent contractors.

6.4.1 For inspection of the Lots in order to verify the performance by Owners of all items of maintenance and repair for which they are responsible.

6.4.2 For inspection, maintenance, repair and replacement of the Areas of Association Responsibility accessible only from such Lots.

6.4.3 For correction of emergency conditions in one or more Lots.

6.4.4 For the purpose of enabling the Association, the Board or any other committees appointed by the Board to exercise and discharge their respective rights, powers and duties under the Project Documents.

duties under the Project Documents.

6.4.5 For inspection of the Lots in order to verify that the provisions of the Project Documents are being complied with by the Owners, their guests, tenants, invitees and the other occupants of the Lot.

ARTICLE 7

THE ASSOCIATION; ORGANIZATION; MEMBERSHIP AND VOTING RIGHTS

7.1 Formation of Association. The Association shall be a nonprofit Utah corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws and this Declaration. In the event of any conflict or inconsistency between this Declaration and the Articles, Bylaws, Association rules or Architectural Rules, this Declaration shall control.

7.2 Board of Trustees and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and Bylaws. Unless the Project Documents specifically require the vote or written consent of the Members, approval or actions to be given or taken by the Association shall be valid if given or taken by the Board.

7.3 The Association Rules. The Board may, from time to time, and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations pertaining to (i) the management, operation and use of the Areas of Association Responsibility including, but not limited to, any recreational facilities situated upon the Area of Association Responsibility; (ii) minimum standards for the maintenance of Lots; (iii) the health, safety or welfare of the Owners and Residents; or (iv) the use of the Lots. In the event of any conflict or inconsistency between the provisions of this Declaration and the Association Rules, the provisions of this Declaration shall prevail. The Association Rules shall be enforceable in the same manner and to the same extent as the covenants, conditions and restrictions set forth in this Declaration.

7.4 Personal Liability. No member of the Board or of any committee of the Association, no officer of the Association, and no manager or other employee of the Association shall be personally liable to any Member, or to any other person or entity, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence of the Association, or any committee, committee member or officer of the Association; provided, however, the limitations set forth in this Section shall not apply to any person who has failed to act in good faith or has engaged in wilful or intentional misconduct.

7.5 Implied Rights. The Association may exercise any right or privilege given to the Association expressly by the Project Documents and every other right or privilege reasonably to be implied from the existence of any right of privilege given to the Association by the Project Documents or reasonably necessary to effectuate any such right or privilege.

7.6 Identity of Members. Membership in the Association shall be limited to Owners of Lots. An Owner of a Lot shall automatically, upon becoming the Owner thereof, be a member of the Association and shall remain a member of the Association until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease.

7.7 Classes of Members and Voting Rights. The Association shall have the following two classes of voting membership:

(i) Class A. Class A members are all Owners, with the exception of the Declarant until the termination of the Class B membership, of Lots. Each Class A member shall be entitled to one (1) vote for each Lot owned. Upon the termination of the Class B membership, the Declarant shall be a Class A member and shall be entitled to one (1) vote for each Lot owned.

(ii) Class B. The Class B member shall be the Declarant. The Class B member shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the earlier of (i) the date on which the Declarant does not own any Lots; or (ii) when the Declarant notifies the Association in writing that it relinquishes its Class B membership.

7.8 Voting Procedures. No change in the ownership of a Lot shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided satisfactory proof thereof. The vote for each Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that a Lot is owned by more than one person or entity and such Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he was acting with authority and consent of all other Owners of the same Lot unless objection thereto is made at the time the vote is cast. In the event more than one vote is cast by a Class A Member for a particular Lot, none of the votes shall be counted and all of the votes shall be deemed void.

7.9 Transfer of Membership. The rights and obligations of any Member other than the Declarant shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of an Owner's Lot, and then only to the transferee of ownership to the Lot. A transfer of ownership to a Lot may be effected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage of record, or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of Utah. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Lot shall

operate to transfer the membership appurtenant to said Lot to the new Owner thereof. Each purchaser of a Lot shall notify the Association of his purchase within ten (10) days after he becomes the Owner of a Lot.

7.10 Architectural Committee Membership Requirements. The Association shall have an Architectural Committee to perform the functions of the Architectural Committee set forth in this Declaration. The Architectural Committee shall be a committee of the Board. The Architectural Committee shall consist of such number of regular members and alternate members as may be provided for in the Bylaws or determined by the Board. So long as the Declarant owns any Lot, the Declarant shall have the sole right to appoint and remove members of the Architectural Committee. At such time as the Declarant no longer owns any Lots, the members of the Architectural Committee shall be appointed by the Board. The Declarant may at any time voluntarily surrender its right to appoint and remove the members of the Architectural Committee, and in that event the Declarant may require, for so long as the Declarant owns any Lot, that specified actions of the Architectural Committee, as described in a Recorded instrument executed by the Declarant, be approved by the Declarant before they become effective. The Architectural Committee may promulgate architectural guidelines, standards and procedures to be used in rendering its decision. Such Architectural Committee Rules may include, without limitation, provisions regarding: (i) the size of Residential Units; (ii) architectural design, with particular regard to the harmony of the design with the surrounding structures and topography; (iii) placement of Residential Units and other buildings; (iv) landscaping designs, context, and conformance with the character of the Property and permitted and prohibited plants; (v) requirements concerning exterior color schemes; (vi) signage; (vii) perimeter and screen wall paper design and appearance. The decision of the Architectural Committee may from time to time amend or repeal the Architectural Committee Rules.

7.11 Suspension of Voting Rights. If any Owner fails to pay any Assessment or other amount due to the Association under the Project Documents within fifteen (15) days after such payment is due or if any Owner violates any other provision of the Project Documents and such violation is not cured within fifteen (15) days after the Association notifies the Owner of the violation, the Board of Directors shall have the right to suspend such Owner's right to vote until such time as all payments, including interest and attorney's fees are brought current, and until any other infractions of violations of the Project Documents are corrected.

ARTICLE 8

COVENANT FOR ASSESSMENT AND CREATION OF LIEN

8.1 Creation of Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned by it, hereby covenants and agrees, and each Owner, other than the Declarant, by becoming the Owner of a Lot, is deemed to covenant and agree, to pay Assessments to the Association in accordance with this Declaration. All Assessments, together with interest, late

charges, and all costs, including, but not limited to, reasonable attorney's fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not a suit is filed, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment is made. Each Assessment, whether or not a suit is filed, shall also be the personal obligation of the person who was the Owner of the Lot at the time when the Assessment became due. The personal obligation for delinquent assessments shall not pass to the successors in the title of the Owner unless expressly assumed by them.

8.2 Annual Assessments.

8.2.1 In order to provide for the operation and management of the Association and to provide funds for the Association to pay: (I) any common expenses; (ii) to perform its duties and obligations under the Project Documents; (iii) replacement and maintenance reserves, the Board, for each Assessment Period, shall assess against each Lot. This will be the Annual Assessment.

8.2.2 The Board shall give notice of the Annual Assessment to each Owner at least thirty (30) days prior to the beginning of each Assessment Period, but the failure to give such notice shall not affect the validity of the Annual Assessment established by the Board nor relieve any Owner from its obligation to pay the Annual Assessment. If the Board determines during any Assessment Period that the funds budgeted for that Assessment Period are, or will, become inadequate to meet all common Expenses for any reason, including, without limitation, nonpayment of Assessment by Members, it may increase the Annual Assessment for that Assessment Period and the revised Annual Assessment shall commence on the date designated by the Board.

8.2.3 The maximum Annual Assessment for each fiscal year of the Association shall be as follows:

(i) Until January 1 of the year immediately following the conveyance of the first lot to a Purchaser, the maximum annual assesment for each lot shall not be more than \$20 for lots not bordering a park or the Lake. For those bordering a park or the Lake the annual assesment will not be more than \$50.

(ii) From and after January 1 of the year immediately following the conveyance of the first Lot to a Purchaser, the Board may, without a vote of the members, increase the maximum Annual Assessment during each fiscal year of the Association by the greater of (a) 5% of the maximum Annual Assessment for the immediately preceding fiscal year or (b) an amount based upon the percentage increase in the Consumer Price Index for all Urban Consumers (CPI-U) U.S. City Average (1982-84=100), issued by the United States Department of Labor Statistics (the "Consumer Price Index"), which amount shall be computed in the last month of each fiscal year in accordance with the following formula:

X = Consumer Price Index for September of the calendar

year immediately preceding the year in which the Annual Assessment commences.

Y= Consumer Price Index for September of the year immediately preceding the calendar year for which the maximum Annual Assessment is determined.

Y-X

X multiplied by the maximum Annual Assessment for the then current fiscal year equals the amount by which the maximum Annual Assessment may be increased.

In the event the Consumer Price Index ceases to be published, then the index which shall be used for computing the increase in the maximum Annual Assessment permitted under this Subsection shall be the substitute recommended by the United States Government for the Consumer Price Index, or in the event no such successor index is recommended by the United States Government, the index selected by the Board.

(iii) As long as there is a Class B Membership, the maximum Annual Assessment may be increased by an amount greater than the maximum increase allowed pursuant to (ii) above with the approval of the Class B Member. When there is no longer a Class B Membership, the maximum Annual Assessment may be increased by an amount greater than the maximum increase allowed pursuant to (ii) above, only by a vote of Members entitled to cast at least two-thirds (2/3) of the votes entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose.

8.3 Rate of Assessment. The amount of Annual Assessment for each Lot other than Lots owned by the Declarant shall be obtained by dividing the total budget of the Association for the Assessment period for which the Annual Assessment is being levied by the total number of Lots subject to Assessment at the time the Annual Assessment is levied by the Board. The Annual Assessment for Lots owned by the Declarant or the Developer shall be an amount equal to seventy-five percent (75%) rate of assessment during the period to which an Annual Assessment is attributable, the Annual Assessment shall be prorated between the applicable rates on the basis of the number of days in the Assessment Period that the Lot qualified for each rate.

8.4 Obligation of Declarant and Developer for Deficiencies. So long as there is a Class B membership in the Association, Declarant and Developer shall pay and contribute to

the Association, within thirty (30) days after the end of each fiscal year of the Association, or at such other times as may be requested by the Board, such funds as may be necessary, when added to the Annual Assessments levied by the Association, to pay all Common Expenses of the Association as they become due. The payment for any such deficiency shall be divided between the Declarant and the Developer on a prorated basis according to the number of Lots owned by each as of the date the request for such deficiency payment is made by the Board.

8.5 Special Assessments. The Association may levy against each Lot which is then subject to assessment, in any Assessment Period, a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of an Improvement, including fixtures and personal property related thereto, provided that any Special Assessment shall have the assent of two-thirds (2/3) of the votes entitled to be cast by Members who are voting or by proxy at a meeting duly called for such purpose.

8.6 Assessment Period. The period for which the Annual Assessment is to be levied (the "Assessment Period") shall be the calendar year, except that the first Assessment Period, and the obligation of the Owners to pay Annual Assessments shall commence upon the conveyance of the first Lot to a Purchaser and terminate on December 31 of such year. The Board in its sole discretion from time to time may change the Assessment Period.

8.7 Commencement Date of Assessment Obligation. All Lots shall be subject to assessment upon the conveyance of the first Lot to a Purchaser.

8.8 Rules Regarding Billing and Collection Procedures. Annual Assessments shall be collected on a quarterly basis or such other basis as may be selected by the Board. Special Assessments may be collected as specified by the Board. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making Assessments and for the billing and collection of the Assessments provided that the procedures are not inconsistent with the provisions of this Declaration. The failure of the Association to send a bill to a Member shall not relieve any Member of his liability for any Assessment or charge under this Declaration, but the Assessment Lien therefore shall not be foreclosed until the Member has been given not less than thirty (30) days written notice prior to such foreclosure that the Assessment or any installment thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. The Association shall be under no duty to refund any payments received by it even though the ownership of the Lot changes during an Assessment Period but successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior Owners.

8.9 Effect of Nonpayment of Assessment: Remedies of the Association.

8.9.1 Any Assessment, or any installment of an Assessment, not paid within five (5) days after the Assessment, or the installment of the Assessment, first became due

shall bear interest from the due date at the rate of twelve percent (12%) per annum or the prevailing VA/FHA interest rate for new home loans, whichever is higher. In addition, the Board of Trustees may establish a late fee to be charged to any Owner who has not paid any Assessment, or any installment of an Assessment, within five (5) days after such payment was due.

8.9.2 The Association shall have a lien on each Lot for: (i) all Assessments levied against the Lot; (ii) all interest, lien fees, late charges, and other fees and charges assessed against the Lot or payable by the Owner of the Lot; (iii) all fines levied against the Owner of the Lot; (iv) all attorney fees, court costs, title report fees, costs and fees charged by any collection agency either to the Association or to an Owner, and any other fees or costs incurred by the Owner of a Lot; (v) any amounts payable to the Association pursuant to Section 10.3 or 10.4 of this Declaration; and (vi) any other amounts payable to the Association pursuant to the Project Documents. The Recording of this Declaration constitutes record notice and perfection of the Assessment Lien. The Association may, at its option, record a Notice of Lien setting forth the name of the delinquent Owner as shown in the records of the Association, the legal description or street address of the Lot against which the Notice of Lien is recorded and the amount claimed to be past due as of the date of the recording of any Notice of Lien against a Lot, the Association shall make a written demand to the defaulting Owner for payment of the delinquent Assessments, together with interest, late charges and reasonable attorneys' fees, if any. The demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for demand, but any number of defaults may be included within the single demand. If the delinquency is not paid within ten (10) days after the delivery of the demand, the Association may proceed with recording a Notice of Lien against the Lot. If the Association records a notice of Lien, the Association may charge the Owner of the Lot against which the Notice of Lien is Recorded, a lien fee in the amount to be set from time to time by the Board.

8.9.3 The Assessment Lien shall have priority over all liens or claims except for: (i) tax liens for real property taxes; (ii) assessments in favor of any municipal or other governmental body; (iii) the lien of any First Mortgage. Any First Mortgagee or any other Person acquiring title or coming into possession of a Lot through foreclosure of the First Mortgage, purchase at a foreclosure sale or trustee sale, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure shall acquire title free and clear of any claims for unpaid assessments and charges against the Lot which became payable prior to the acquisition of such Lot by the First Mortgagee or other Person. Any Assessments and charges against the Lot which accrue prior to such sale or transfer shall remain the obligation of the defaulting Owner of the Lot.

8.9.4 The Association shall not be obligated to release the Assessment Lien until all delinquent Assessments, interest, lien fee, fines, reasonable attorneys' fees, court costs, collection costs, and all other sums payable to the Association by the Owner of the Lot have been paid in full.

8.9.5 The Association shall have the right, at its option, to enforce

collection of any delinquent Assessments together with interest, lien fees, reasonable attorneys' fees, and any other sums due to the Association in any manner allowed by law including, but not limited to, (i) bringing an action at Law against the Owner personally obligated to pay the delinquent Assessments and such action may be brought without waiving the Assessment Lien securing the delinquent Assessments or (ii) bringing an action to foreclose the Assessment Lien against the Lot in the manner provided by law for the foreclosure of a realty mortgage. The Association shall have the power to bid in any foreclosure sale and to purchase, acquire, hold, lease, mortgage, and convey any and all Lots purchased at such sale.

8.10 Evidence of Payment of Assessment. Upon receipt of a written request by a Member or any other Person, the Association, within a reasonable period of time thereafter, shall issue to such Member or other Person a written certificate stating that all Assessments, interest, fees, and charges have been paid with respect to any specified Lot as of the date of such certificate, or if all Assessments have not been paid, the amount of such Assessment, interest, fees, and charges 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 matters therein stated as against any bona fide Purchaser of, or lender on, the Lot in question.

8.11 Purpose for Which Association's Funds May Be Used. The Association shall apply all funds and property collected and received by it (including the Assessments, fees, loan proceeds, surplus funds, and all property received by it from any other source) for the common good and benefit of the Project and the Owners and Residents by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision, and operation, by any manner or method whatsoever, of any and all land, properties, improvements, facilities, services, projects, programs, studies, and systems, within or without the Project, which may be necessary, desirable, or beneficial to the general common interests of the Project, the Owner, and the Residents. The following are some, but not all, of the areas in which the Association may seek to aid, promote, and provide for such common benefit: social interaction among Members and Residents, maintenance of public right-of-way and drainage areas within the Project, recreation, liability insurance, communications, utilities, public services, safety and indemnification of officers and directors of the Association. The Association may also expend its funds for any purpose for which a nonprofit corporation may expend funds under the laws of the State of Utah.

8.12 Surplus Funds. The Association shall not be obligated to spend in any year all the Assessments and other sums received by it in such year, and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year, and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

8.13 Working Capital Fund. To insure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each Purchaser of a Lot from the Declarant or a Developer shall pay to the Association immediately upon becoming the Owner of the Lot a sum equal to one-half (1/2) of the current Annual Assessment for the Lot. Funds paid to the Association pursuant to this Section may be used by the Association for payment of operating expenses or any other purpose permitted under the Project Documents. Payments made pursuant to this Section shall be non-refundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration. Notwithstanding the foregoing provision of this Section, no payment shall be due under this Section with respect to the purchase of Lots by Developers from Declarant.

8.14 Transfer Fee. Each Purchaser of a Lot shall pay to the Association immediately upon becoming the Owner of the Lot a transfer fee in such amount as is established from time to time by the Board. The transfer fee shall not be charged upon the sale of a Lot to a Developer or upon the first sale of each Lot to a non-Developer Owner.

ARTICLE 9

MAINTENANCE

9.1 Areas of Association Responsibility. The Association, or its duly delegated representative, shall manage, maintain, repair and replace the Areas of Association Responsibility, and all Improvements located thereon, except for any part of the Areas of Association responsibility which any governmental entity is maintaining or is obligated to maintain. The Board shall be the sole judge as to the appropriate maintenance, repair and replacement of all Areas of Association Responsibility.

10.2 Lots. Each Owner of a Lot shall be responsible for maintaining, repairing, or replacing his Lot, and all buildings, Residential Units, landscaping or other Improvements situated thereon, except for any portion of the Lot which is an Area of Association responsibility. Each Lot Owner is responsible to repair any damage done by the Lot Owner or his family, tenants, guests, and invitees to the irrigation system within the boundaries of such Lot Owner's Lot. Repairs for damages to said system due to other causes shall be the responsibility of the Association. All buildings, Residential Units, landscaping, and other Improvements shall at all times be kept in good condition and repair. All grass, hedges, shrubs, vines, and plants of any type on a Lot shall be irrigated, mowed, trimmed, and cut at regular intervals so as to be maintained in a neat and attractive manner. Trees, shrubs, vines, plants, and grass which die shall be promptly removed and replaced with living foliage of like kind, unless different foliage is approved, in writing, by the Architectural Committee. No yard equipment, wood piles, or storage areas may be maintained so as to be Visible From Neighboring Property or street. All Lots upon which no Residential Units, buildings, or other structures, landscaping or Improvements have been constructed, shall be maintained in a weed free and attractive manner.

9.3 Assessment of Certain Costs of Maintenance and Repair. In the event that the need for maintenance or repair of an Area of Association Responsibility is caused through the willful or negligent act of any Owner, his family, tenants, guests, or invitees, the cost of such maintenance or repairs shall be paid by such Owner to the Association upon demand and payment of such amounts shall be secured by the Assessment Lien.

9.4 Improper Maintenance and Use of Lots. In the event any portion of any Lot is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of the Project which are substantially affected thereby or related thereto, or in the event any portion of a Lot is being used in a manner which violates this Declaration; or in the event the Owner of any Lot is failing to perform any of its obligations under the Project Documents, the Board may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fourteen (14) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said fourteen (14) day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be paid by such Owner to the Association upon demand and payment of such amounts shall be secured by the Assessment Lien.

ARTICLE 10

INSURANCE

10.1 Scope of Coverage. Commencing not later than the time of the first conveyance of a Lot to a Purchaser, the Association shall maintain, to the extent reasonably available, the following insurance coverage:

10.1.1 Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$300,000. Such insurance shall cover all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Areas of Association Responsibility, and all other portions of the Project which the Association is obligated to maintain under this Declaration;

10.1.2 Property insurance on all Areas of Association Responsibility insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Areas of Association Responsibility, as determined by the Board; provided, however, that the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement cost of the insured property, exclusive of land, excavations, foundations, and other items normally excluded from

a property policy;

10.1.3 Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association or the Owners;

10.1.4 The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions: (i) that there shall be no subrogation with respect to the Association, its agents, servants, and employees, with respect to Owners and members of their household; (ii) no act of omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery on the policy; (iii) that the coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners or their mortgagees or beneficiaries under deeds of trust; (iv) a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners; and (v) statement of the name of the insured as the Association.

10.2 Certificates of Insurance. An insurer that has issued an insurance policy under this Article shall issue a certificate or a memorandum of insurance to the Association and, upon request, to any Owner, mortgagee, or beneficiary under a deed of trust. Any insurance obtained pursuant to this Article may not be canceled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association, each Owner and each mortgagee or beneficiary under a deed of trust to whom certificates of insurance have been issued.

10.3 Payment of Premiums. The premiums for any insurance obtained by the Association pursuant to Section 10.1 of this Declaration shall be included in the budget of the Association and shall be paid by the Association.

10.4 Payment of Insurance Proceeds. With respect to any loss to any Area of Common Responsibility covered by property insurance obtained by the Association in accordance with this Article, the loss shall be adjusted with the Association, and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. Subject to the provisions of Section 10.5 of this Declaration, the proceeds shall be disbursed for the repair or restoration of the damage to the Area of Association Responsibility.

10.5 Repair and Replacement of Damaged or Destroyed Property. Any portion of the Areas of Association Responsibility which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (ii) Owners representing at least eighty percent (80%) of the total authorized votes in the Association vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If all of the Areas of Association Responsibility are not repaired or replaced, insurance proceeds attributable to the damaged Areas of Association Responsibility shall be used to restore the damaged area to a condition which is not in violation of any state or local health or

safety statute or ordinance and the remainder of the proceeds shall either (i) be retained by the Association as an additional capital reserve, or (ii) be used for payment of operating expenses of the Association if such action is approved by the affirmative vote or written consent, or any combination thereof, of Members representing more than fifty percent (50%) of the votes in the Association.

ARTICLE 11

GENERAL PROVISIONS

11.1 **Enforcement.** The Association or any Owner shall have the right to enforce the Project Documents in any manner provided for in the Project Documents or by law in equity, including, but not limited to, an action to obtain an injunction to compel removal of any Improvements constructed in violation of this Declaration or to otherwise compel compliance with the Project Documents. The failure of the Association or an Owner to take enforcement action with respect to a violation of the Project Documents shall not constitute or be deemed a waiver of the right of the Association or any Owner to enforce the Project Documents in the future. If any lawsuit is filed by the Association or any Owner to enforce the provisions of the Project Documents or in any other manner arising out of the Project Documents or the operations of the Association, the prevailing party in such action shall be entitled to recover from the other party all attorney fees incurred by the prevailing party in the action. In addition to any other rights or remedies available to the Association pursuant to the Project Documents or at law or in equity, the Association shall have the power to levy reasonable fines against an Owner for a violation of the Project Documents by the Owner, a Lessee of the Owner, or by any Resident of the Owner's Lot.

11.2 **Term: Method of Termination.** This Declaration shall continue in full force and effect for a term of twenty (20) years from the date this Declaration is recorded. After which time, this Declaration shall be automatically extended for successive periods of ten (10) years each. This Declaration may be terminated at any time if such termination is approved by the affirmative vote or written consent, or any combination thereof, of the Owners representing ninety percent (90%) or more of the votes in each class of membership and by the holders of First Mortgagees on Lots, the Owners of which have seventy-five percent (75%) or more of the votes in the Association. If the necessary votes and consents are obtained, the Board shall cause to be recorded with the County Recorder of Utah County, Utah, a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signature acknowledged. Thereupon this Declaration shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

11.3 **Amendments**

11.3.1 Except for amendments made pursuant to Subsection 11.3.2 or 11.3.5 of this Declaration, the Declaration may only be amended by the written approval of the affirmative vote or any combination thereof, of Owners of not less than seventy-five percent (75%) of the Lots.

11.3.2 The Declarant, so long as the Declarant owns any Lot, and thereafter, the Board, may amend this Declaration or the Plat, without obtaining approval or consent of any Owner or First Mortgagee, in order to conform this Declaration of the Plat to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration, or any federal, state, or local government agency whose approval of the Project, Plat, or Project Documents is required by law or requested by the Declarant or the Board.

11.3.3 So long as the Declarant owns any Lot, any amendment to this Declaration must be approved in writing by the Declarant.

11.3.4 So long as there is a Class B membership in the Association, any amendment to this Declaration must have the prior written approval of the Veterans Administration or the Federal Housing Administration.

11.3.5 The Declarant, so long as the Declarant owns any Lot and thereafter, the Board, may amend this Declaration without the consent of any other Owner to correct any error inconsistency in this Declaration.

11.3.6 So long as the Declarant owns more than seventy-five percent (75%) of the Lots subject to this Declaration, any amendment to the Declaration shall be signed by Declarant and recorded in the records of Utah County, Utah. At any time the Declarant does not own at least seventy-five percent (75%) of the Lots subject to the Declaration, any amendment approved pursuant to Subsection 11.3.1 of this Declaration or by the Board pursuant to Subsection 11.3.2 or 11.3.5 of this Declaration shall be signed by the President or Vice President of the Association and shall be recorded with the County Recorder of Utah County, Utah, and any such amendment shall certify that the amendment has been approved as required by this Section. Any amendment made by the Declarant pursuant to Subsection 11.3.2 or 11.3.5 of this Declaration shall be signed by the Declarant and recorded with the County Recorder of Utah County, Utah. Unless a later effective date is provided for in the amendment, any amendment to this Declaration shall be effective upon the Recording of the amendment.

11.4 Rights of First Mortgagees.

11.4.1 Any First Mortgagee will, upon written request, be entitled to: (i) inspect the books and records of the Association during normal business hours; (ii) receive within ninety (90) days following the end of any fiscal year of the Association, a financial statement of the Association for the immediately preceding fiscal year of the Association, free of charge to the

requesting party; and (iii) receive written notice of all meetings of the Members of the Association and be permitted to designate a representative to attend all such meetings.

11.4.2 No Lots shall be partitioned or subdivided without the prior written approval of the holder of any First Mortgagee on such Lot.

11.4.3 Unless two-thirds (2/3) of the Owners (other than the sponsor, developer, or builder) of at least two-thirds (2/3) of the Lots have given their prior written approval the Association shall not be entitled to:

(i) Change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner.

(ii) Change, waive, or abandon any scheme or regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Lots.

(iii) Use hazard insurance proceeds for losses to any areas of Association responsibility, other than the repair, replacement, or reconstruction of such areas of Association responsibility.

11.4.4 No provision of this Declaration gives or shall be construed as giving any Owner or other Person priority over any rights of a First Mortgagee of a Lot in the case of the distribution to such Owner of insurance proceeds or condemnation awards for losses to or taking of the Common Area.

11.4.5 Any First Mortgagee who receives written request from the Board to respond to or consent to any action requiring the consent of the First Mortgagee shall be deemed to have approved such action if the Association has not received a negative response from such First Mortgagee within thirty (30) days of the date of the Association's request.

11.4.6 In the event of any conflict or inconsistency between the provisions of this Section and any other provision of the Project Documents, the provisions of this Section shall prevail; provided, however, that in the event of any conflict or inconsistency between the provisions of this Section and any other provisions of the Project Documents with respect to the number of percentage of Owners or First Mortgagees that must consent (i) an amendment of the Declaration, Articles or Bylaws; (ii) a termination of the Project, or (iii) certain actions of the Association as specified in Subsection 11.4.3 of this Declaration, the provision requiring the consent of the greatest number or percentage of Owners or First Mortgagees being required, shall have the right to amend this Declaration, the Articles, or the Bylaws in order to conform this Declaration, the Articles, or the Bylaws to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, Federal Housing Administration, the Veterans Administration, or any federal, state, or local governmental agency whose approval of the Project, the Plat, or the Project Documents is required by the Declarant or the Board.

11.5 Interpretation. Except for judicial construction, the Association shall have the exclusive right to construe and interpret the provision of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive, and binding as to all persons and property benefitted or bound by this Declaration. In the event of any conflict between this Declaration and the Articles, Bylaws, Association Rules, or the Architectural Committee Rules, this Declaration shall control. In the event of any conflict between the Articles and the Bylaws, the Articles shall control. In the event of any conflict between the Bylaws and the Association Rules or the Architectural Committee Rules, the Bylaws shall control.

11.6 Severability. Any determination by any court of competent jurisdiction that any provision of the Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions thereof.

11.7 Rule Against Perpetuities. If any interest purported to be created by this Declaration is challenged under the Rule Against Perpetuities or any related rule, the interest shall be construed as becoming void and of no effect as of the end of the applicable period of perpetuities computed from the date when the period of perpetuities starts to run on the challenged interest; the "lives in being" for computing the period of perpetuities shall be (i) those which would be used in determining the validity of the challenged interest plus (ii) those of the issue of the Board who are living at the time the period of perpetuities starts to run on the challenged interest.

11.8 Change of Circumstances. Except as otherwise expressly provided in this Declaration, no change of condition or circumstances shall operate to extinguish, terminate, or modify any of the provisions of this Declaration.

11.9 Notice of Violation. The Association shall have the right to record a written notice of the violation by any Owner or resident of any restriction of other provision of the Project Documents. The notice shall be executed by an officer of the Association and shall contain substantially the following information: (i) the name of the Owner or Resident violating, or responsible for the violation of, the Project Documents; (ii) the legal description of the Lots against which the notice is being Recorded; (iii) a brief description of the nature of the violation; (iv) a statement that the notice is being Recorded by the Association pursuant to this Declaration; and (v) a statement of the specific steps which must be taken by the Owner or Occupant to cure the violation. Recordation of a notice of violation shall serve as notice to the Owner and Resident, and any subsequent purchaser of the Lot, that there is such a violation. If, after the recordation of such notice, it is determined by the Association that the violation referred to in the notice has been cured, the Association shall record a notice of compliance which shall state the legal description of the Lot against which the notice of violation was Recorded, and the recording data of the notice of violation, and shall state that the violation referred to in the notice has been cured or that the violation didn't exist. Failure by the Association to record a notice of violation shall not constitute a waiver of any such violation, constitute any evidence that no violation exists with

respect to a particular Lot or constitute a waiver of any right of the Association to enforce the Project Documents.

11.10 Laws, Ordinances, and Regulations.

11.10.1 The covenants, conditions, and restrictions set forth in this Declaration and the provisions requiring Owners and other persons to obtain the approval of the Board or the Architectural Committee with respect to certain actions are independent of the obligation of the Owners and other persons to comply with all applicable laws, ordinances, and regulations, and compliance with this Declaration shall not relieve an Owner or any other person from the obligation and also comply with all applicable laws, ordinances, and regulations.

11.10.2 Any violation of any state, municipal, or local law, ordinance or regulation pertaining to ownership, occupation, or use of any property within the Property is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

11.11 References to this Declaration in Deeds. Deeds to and instruments affecting any Lot or any other part of the Project may contain the covenants, conditions, and restrictions herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any Deed or instrument, each and all of the provisions of this Declaration shall be binding upon the grantee-Owner or other person claiming through any instrument and his heirs, executors, administrators, successors, and assignees.

11.12 Gender and Number. Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural; and words in the plural shall include the singular.

11.13 Captions and Titles. All captions, titles, or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit modify or otherwise affect any of the provisions hereof or to be used in determining the intent of context thereof.

11.14 Notices. If notice of any action or proposed action by the Board or any committee or of any meeting is required by applicable law, this Declaration or resolution of the Board to be given to any Owner, Lessee, or Resident then, unless otherwise specified herein or in the resolution of the Board, such notice requirement shall be deemed satisfied if notice of such action or meeting is published once in any newspaper in general circulation in Utah County. This Section shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other manner.

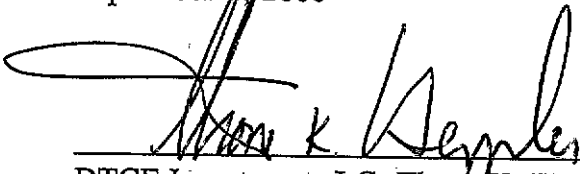
11.15 FHA/VA Approval. So long as there is a Class B membership in the

Association, the following actions shall require the prior written approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, and amendment of this Declaration.

11.16 No Absolute Liability. No provision of the Project Documents shall be interpreted or construed as imposing on Owners absolute liability for damage of association responsibility to the areas of Association Responsibility or the Lots. Owners shall be only responsible for damage to the areas or Lot caused by the Owners' negligence or intentional acts of the Owner or his family, tenants, guests, or invitees.

11.17 References to VA and FHA. In various places throughout the Project Documents, references are made to the Department of Veterans Affairs ("VA") and the Fair Housing Administration ("FHA") and, in particular, to various consents or approvals required of either of both of such agencies. Such references are included so as to cause the Project Documents to meet certain requirements of such agencies should the Declarant request approval of the Project by either or both of those agencies. However, Declarant shall have no obligation to request approval of the Project by either or both of such agencies. Unless and until the VA or the FHA have approved the Project as acceptable for insured or guaranteed loans and at any time during which such approval, once given, has been revoked, withdrawn, canceled, or suspended and there are no outstanding mortgages or deeds of trust recorded against a Lot to secure payment of an insured or guaranteed loan by either of such agencies, all references hereunto required approvals or consents of such agencies shall be deemed null and void and of no force and effect.

September 1, 2000



DTCF Investments LC, Thone K. Heppler, Managing Partner

ATTACH NOTARY ACKNOWLEDGMENT HERE

(Individual)

STATE OF UTAH
COUNTY OF Utah SS.

On the 1ST day of SEPTEMBER, A.D. 2000, personally appeared
before me Thone K. Heppler, mananing partner of DTCF Investments, the signer(s) of the
above instrument, who duly acknowledged to me that ...he... executed the same.

Susan G. Palmer
.....
Notary Public residing at:

My Commission Expires: 8/27/04

Mapleton, Utah
.....

