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**DECLARATION OF PROTECTIVE EASEMENTS,
COVENANTS, CONDITIONS AND RESTRICTIONS
(Including Owner Association Bylaws)**

INDEPENDENCE AVENUE

An Expandable Planned Unit Development

Provo City, Utah County, Utah

THIS DECLARATION OF PROTECTIVE EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS (the "Declaration") is made this 26th day of April, 2007, by **INDEPENDENCE AVENUE, LLC**, a Utah limited liability company ("Declarant"), in its capacity as the owner and developer of **Independence Avenue**, a residential expandable planned unit development in Provo City, Utah County, Utah (the "Development").

ARTICLE I

PURPOSE AND EFFECTUATION

1.01 **Purpose.** The purpose of this Declaration is to provide for the preservation of the values of Lots, Units and Common Areas within the Development; and for the maintenance of any private roadways, easements, driveways, sidewalks, parking areas, recreation and community amenities, open space, landscaping, trees and all other Common Areas therein.

1.02 **Effectiveness.** From and after the effective date hereof: (a) each part of the Development, and each Lot and Unit lying within the boundaries of the Development, shall comprise constituent parts of a single expandable planned unit development; (b) the Development shall consist of the Lots and Units constructed therein, and the Common Areas as described and depicted on any Plat; (c) the Declaration for the Development shall consist of this document following the recordation thereof in the Public Records, as the same may thereafter be supplemented or amended in accordance with the provisions thereof; and (d) the Plats of the Development shall consist of the instruments identified as **Independence Avenue Plat A, An Expandable Planned Unit Development, Provo City, Utah County, State of Utah**, and recorded in the Public Records as the same may thereafter be amended; and any similar Plat recorded in the Public Records pursuant to the provisions of this Declaration as set forth in Sections 3.03 and 3.04 relating to annexation or expansion of the Development.

ARTICLE II

DEFINITIONS

When used throughout this Declaration, including the title and preamble, the following terms shall have the meanings indicated:

Additional Land shall mean that land located in the City as is set forth and described in **EXHIBIT B**, attached hereto and made a part hereof, and identified as being for future expansion of the Development.

Articles shall mean and refer to the Articles of Incorporation of the Association, which are or will be filed in the Office of the Division of Corporations and Commercial Code, State of Utah, as said Articles may be amended from time to time.

Assessment(s) shall mean the amount(s) levied and assessed by the Association against each Owner and such Owner's Lot and Unit (whether an Annual, Special or Specific Assessment) as described in the Association's Bylaws in ARTICLE XIII of this Declaration.

Association shall mean **Independence Avenue Owners Association**, a Utah nonprofit corporation.

Board shall mean the Board of Directors of the Association.

Bylaws shall mean and refer to the Bylaws of the Association as set forth and embodied in this Declaration in ARTICLES XI, XII and XIII.

City shall mean and refer to Provo City, Utah County, Utah, the municipality in which the Development is located and by which it has been permitted.

Common Area(s) shall mean all portions of the Development, except the Lots and Units, and shall include all property maintained and administered by the Association for the common use and enjoyment of the Owners, such as any private, undedicated roadways, walkways, easements, driveways, parking areas, club house and related amenities, open spaces, landscaping, storm drains, and the like, together with all easements appurtenant thereto, whether or not reflected on the Plat.

Common Expenses shall mean and refer to those sums expended by the Association in carrying out its duties and responsibilities of maintenance, operation and management of the Common Areas, including, but not limited to: insurance premiums on coverages required to be obtained and maintained by the Association; maintenance and landscaping (including snow removal), repairs and improvements upon Common Area; utilities and similar fees for which the Association may be responsible (electricity, water, gas, garbage, storm water discharge fees, etc.); and establishment and funding of any reserve accounts to cover major repairs to or replacements of Common Area.

DRC shall mean and refer to the Design Review Committee established and referred to in ARTICLE VII of the Declaration.

Declarant shall mean **Independence Avenue, LLC**, a Utah limited liability company, its successors and assigns, if any, as owner and developer of the Development.

Declaration shall mean this **Declaration of Protective Easements, Covenants, Conditions and Restrictions (Including Owner Association Bylaws)** pertaining to the Development, recorded in the Public Records, as the same may be amended from time to time. **Supplemental Declaration** shall mean and refer to that document utilized to annex Additional Land into the Development as set forth in Sections 3.03 and 3.04 of the Declaration.

Development shall mean the expandable residential planned unit development known as **Independence Avenue**, located in the City, as it exists at any given time.

Enabling Ordinance shall mean and refer to Section 14.06.02 of the *Provo City Code*, as amended.

Limited Common Area shall mean any Common Area designated for exclusive use by the Owner or Owners of a particular Lot or Lots, whether or not designated as such on the Plat. Limited Common Areas identified on the Plat as immediately adjacent to a Lot shall be Limited Common Area for the exclusive use of the Owner or Owners of such Lot.

Lot shall mean and refer to any of the separately numbered and individually described parcels of land within the Development, as designated on the Plat, intended for single family residential use. Lot numbers shall be synonymous with Unit numbers, notwithstanding the assignment of a separate residential address to each Lot/Unit by the City as may be reflected on the Plat.

Managing Agent shall mean any person or entity appointed or engaged by the Association as Managing Agent of the Development as provided in Section 12.04 of the Declaration.

Mortgage shall mean any recorded first mortgage or first deed of trust encumbering a Lot; and **Mortgagee** shall mean any mortgagee or beneficiary named in a Mortgage.

Owner shall mean any person who is the owner of record (as reflected in the Public Records) of a fee or undivided fee interest in any Lot/Unit, and any contract purchaser of any Lot/Unit. No Mortgagee, nor any trustee or beneficiary of a deed of trust or trust deed, shall be an Owner unless such party acquires fee title to a Lot/Unit pursuant to foreclosure or sale, or conveyance in lieu thereof. Declarant shall be an Owner with respect to each platted Lot owned by it, and/or upon which a Unit may be in any stage of construction until such Lot/Unit is sold to a purchaser and title thereto passes from Declarant to such purchaser. Multiple Owners of a particular Lot/Unit shall be jointly and severally liable as to all responsibilities and obligations of an Owner.

Plat or **Plats** shall mean and refer to any of the subdivision plats of the Development as approved by the City and recorded in the Public Records.

Property shall mean all real property to which the Declaration applies, including that described in Section 3.01 of the Declaration (**EXHIBIT A**) and portions of the Additional Land (**EXHIBIT B**) as and when the same are annexed into the Development.

Public Records shall mean the Office of the Utah County Recorder located in Provo, Utah.

Rules and Regulations shall mean and refer to those Rules and Regulations authorized, adopted, and promulgated to the Owners from time to time by the Board pursuant to the provisions of Section 12.03 of the Declaration.

Storm Drainage Agreement shall mean and refer to that certain agreement referenced in Section 5.10 of the Declaration.

Unit shall mean an attached residential dwelling structure which is designed, constructed and intended for use or occupancy as a single family residence on a Lot within the Development, together with all improvements located on the same Lot and used in conjunction with such residence, including anything located within or without said Unit (but designated and designed to serve only that Unit) such as garages, patios, decks, appliances, electrical receptacles and outlets, air conditioning compressors and other air conditioning apparatus. Units will share a party wall with adjoining attached Units along their common Lot/Unit lines. Lot and Unit numbers are synonymous.

ARTICLE III

PROPERTY DESCRIPTION; ANNEXATION

3.01 **Submission.** The Property which shall be held, transferred, sold, conveyed, and occupied, subject to the provisions of the Declaration, consists of the real property in the City, as set forth and described in **EXHIBIT A**, attached hereto and made a part hereof:

TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights or obligations incident to, appurtenant to, or accompanying the above-described Property, whether or not the same are reflected on the Plat.

RESERVING UNTO DECLARANT, however, such easements and rights or obligations of ingress and egress over, across, through, and under the said Property and any improvements (including Buildings) now or hereafter constructed thereon as may be reasonably necessary for Declarant (in a manner which is reasonable and not inconsistent with the provisions of this Declaration): (i) to construct and complete each of the Units and all of the other improvements described in this Declaration or on the Plat, and to do all things reasonably necessary or proper in connection therewith; (ii) to construct and complete on the Additional Land or any portion thereof such improvements as Declarant shall determine to build in its sole discretion (and whether or not the Additional Land or any portion thereof has been or hereafter will be added to the Development); and (iii) to improve portions of the Property with such other or additional improvements, facilities, landscaping and television, or other communication systems designed for the use and enjoyment of all the Owners as Declarant may reasonably determine to be

appropriate. If, pursuant to the foregoing reservations, the Property or any improvement thereon is traversed or partially occupied by a permanent improvement or utility line, a perpetual easement for such improvement or utility line shall exist. With the exception of such perpetual easements, the reservations hereby effected shall, unless sooner terminated in accordance with their terms, expire 15 years after the date on which this Declaration is recorded in the Public Records.

THE FOREGOING IS SUBJECT TO: (i) all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; (ii) all Patent reservations and exclusions; (iii) all mineral reservations of record and rights incident thereto; (iv) all instruments of record which affect the above-described Property or any portion thereof, including, without limitation, any mortgage (and nothing in this paragraph shall be deemed to modify or amend such mortgage); (v) all visible easements and rights-of-way; (vi) all easements and rights-of-way, encroachments, or discrepancies shown on, or revealed by, a Plat or otherwise existing; (vii) an easement for each and every pipe, line, cable, wire, utility line, or similar facility which traverses or partially occupies the Property at such time as construction of all Development improvements is complete; (viii) all easements necessary for ingress to, egress from, maintenance of, and replacement of all such pipes, lines, cable, wires, utility lines, and similar facilities; and (ix) **TO EACH OF THE EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS CONTAINED IN THIS DECLARATION.**

3.02 Division into Lots. The Development is divided into 24 numerically numbered Lots, as set forth and described on the Plat, with appurtenant and equal rights and easements of use and enjoyment in and to the Development's Common Areas, as well as appurtenant obligations pertaining to Assessments, maintenance, and similar matters, as set forth in the Declaration and the Bylaws embodied therein.

3.03 Annexation by Declarant. Declarant may expand the Development subject to this Declaration by the annexation of all or part of the lands comprising the Additional Land. Subject to compliance with the conditions imposed by the following Section 3.04, the annexation of any such land shall become effective upon the recordation in the Public Records of a Plat of such Additional Land signed by the owner thereof and of a Supplemental Declaration which: (a) is signed by the then owner of such Additional Land as Declarant; (b) describes the land to be annexed; (c) declares that the annexed land is to be held, transferred, sold, conveyed, and occupied as part of the Property subject to this Declaration; and (d) sets forth such additional limitations, restrictions, easements, covenants and conditions, not inconsistent with those of this Declaration, as are applicable to the annexed land. When any such annexation becomes effective, the annexed land shall become part of the Property and the Development and subject to the provisions of this Declaration and any amendment thereto.

3.04 Limitation on Annexation. Declarant's right to annex land to the Development shall be subject to the following limitations:

(a) The annexed land must be part of the Additional Land set forth and described in **EXHIBIT B** hereto:

(b) Declarant shall not effectuate any annexation of land which would cause the total number of Lots/Units existing in the Development to exceed 159.

(c) The holder of any mortgage, deed of trust or other security device affecting any part of the Additional Land being annexed into the Development must consent, through appropriate instruments recorded in the Public Records, to the recordation of the Supplemental Declaration and to the Plat to which such Supplemental Declaration relates;

(d) The Additional Land added to the Development must be subdivided into Lots and Common Areas designed to be used for purposes similar to those contemplated by this Declaration, with all Units and Lots being similar in concept and style with that of such Units and Lots in the preceding plat or plats of the Development, and consistent with the provisions of the Enabling Ordinance.

(e) All Common Areas covered by the Supplemental Declaration designated on the Plat related thereto shall be subject to the provisions of Section 5.03 of this Declaration; and,

(f) Declarant's right to annex land to the Development shall expire six years after this Declaration is filed for record in the Public Records.

3.05 No Obligation to Annex or Develop. Declarant has no obligation hereunder to annex any Additional Land to the Development or to develop or preserve any portion of Additional Land in any particular way or according to any particular time schedule. No land other than the Property, as defined on the date hereof, and portions of the Additional Land annexed thereto in accordance with the terms and provisions of this ARTICLE III, shall be deemed to be subject to this Declaration.

ARTICLE IV

DUTIES AND OBLIGATIONS OF OWNERS

4.01 Maintenance and Repairs. Each Owner shall, at his own cost and expense, maintain his Lot and Unit constructed thereon, in good condition and repair at all times. In the event of the damage or destruction of any Unit, the Owner of the Lot upon which such Unit is situated shall either rebuild the same within a reasonable time or shall raze the remains thereof so as to prevent the unsightly appearance and dangerous condition of a partially destroyed structure in the Development. **The painting or repainting, remodeling, rebuilding or modification of any Unit exteriors, or parts thereof, must first be submitted to and approved by the DRC pursuant to its procedures.** Each Owner of any Lot in the Development has the affirmative duty to do everything possible to keep his Lot, Unit, and other improvements in good and attractive condition and repair at all times. No Owner shall openly or wantonly neglect or fail to perform such duty.

4.02 Owner Insurance Obligations. Notwithstanding any insurance coverage required to be provided herein by the Association, each Unit Owner shall be responsible to procure and maintain in force, at his own cost and expense, the insurance coverage set forth and required under the provisions of Section 8.06 of the Declaration.

4.03 Assessments and Rules Observance. Each Owner shall be responsible for the prompt payment of any Assessments made pursuant to the provisions of the Declaration, including the Bylaws, and for the observance of the Rules and Regulations promulgated by the Association's Board from time

to time pursuant to Section 12.03 of the Declaration. Owners in violation of the provisions of this Section 4.03 will not be deemed to be in good standing for Association voting purposes, and may subject their Lot and Unit to lien and collection procedures as provided herein.

4.04 **Transfer of Interests.** Except for obligations already accrued, an Owner who, for other than purposes of security, transfers all of his interests in his Lot to another, either voluntarily or by operation of law, shall be relieved of all obligations incurred under this Declaration following such transfer.

ARTICLE V

PROPERTY RIGHTS; CONVEYANCES AND EASEMENTS

5.01 **Easement Concerning Common Areas.** Each Lot shall have appurtenant thereto a nonexclusive right and easement of use and enjoyment in and to the Common Areas for their intended purposes; subject, however to the provisions of Section 5.04, below. Such right and easement shall be appurtenant to, and shall pass with title to, each Lot and shall in no event be separated therefrom.

5.02 **Form of Conveyancing.** Any deed, lease, mortgage, deed of trust, purchase contract or other instrument conveying or encumbering title to a Lot shall describe the interest or estate involved substantially as follows:

Lot ____, Plat ____, Independence Avenue, An Expandable Planned Unit Development, Provo City, Utah County, Utah; **SUBJECT TO the Declaration of Protective Easements, Covenants, Conditions and Restrictions of Independence Avenue, An Expandable Planned Unit Development** (the "Declaration"), recorded in the Office of the Utah County Recorder (as the same may have heretofore been amended or supplemented), **TOGETHER WITH** a right and easement of use and enjoyment in and to the Common Areas described in said Declaration (as the same may have heretofore been amended).

Whether or not the description employed in any such instrument is in the above-specified form, however, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot.

5.03 **Title to and Taxation of Common Areas.** Consistent with the provisions of Section 10-9a-606 of the *Utah Municipal Code*, title to the Development's Common Area real property shall not be separately owned or conveyed independent of the Lots created by the Plat containing such Common Area. For purposes of tax assessment, ownership of such property shall be divided equally among the Lots/Units.

5.04 **Limitation on Common Area Easement.** Each Lot's appurtenant right and easement of use and enjoyment of the Common Areas shall be subject to the following:

- (a) The right of the Association, as provided in Section 12.03, to govern by reasonable Rules and Regulations the use of the Common Areas

so as to provide for the enjoyment thereof in a manner consistent with the collective rights of all of the Owners; and

(b) The right of the City, and any other governmental or quasi-governmental body having jurisdiction over the Property, to enjoy access and rights of ingress and egress over and across any private street or driveway, parking area, walkway, easement, or open area contained within the Common Areas for the purpose of providing police and fire protection and providing any other governmental or municipal service.

5.05 Utility Easements. Each Lot is subject to appurtenant easements for underground lines for utility purposes under and through such portions of the Common Areas as are comprised of roads, walkways and landscaped areas. If any Owner utilizes such easement rights with respect to his Lot/Unit, he shall be responsible for the restoration to its former state of any portion of the Common Areas which may have been disturbed or damaged as a result.

5.06 Easements for Encroachments. If any structure or Unit improvement (including without limitation, roof or deck overhangs) constructed on any Lot to which this Section 5.06 applies, whether or not constructed in replacement of the structure or improvement previously located thereon (so long as such structure or improvement is in substantially the same configuration and location as such prior structure or improvement) now or hereafter encroaches upon any other Lot or upon any portion of the Common Areas, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall exist. If any structure (including without limitation, roof or deck overhangs) on any Lot shall be partially or totally destroyed and then rebuilt in a manner intended to substantially duplicate the location and configuration of the structure so destroyed, minor encroachments of such structure upon any other Lot or upon any portion of the Common Areas due to the reconstructed structure's being in a slightly different location than its predecessor, shall be permitted; and valid easements for such encroachments and the maintenance thereof, so long as they continue, shall exist.

5.07 Limited Common Area Easements. Any Limited Common Area within the Development is deemed thereby to constitute a perpetual easement appurtenant to the Lot or Lots to which it is attached and to which it appertains. Notwithstanding the obligation of the Association to maintain Common Areas pursuant to ARTICLE XII and various other Sections of the Declaration, the Owner or Owners of the Lots to which such Limited Common Area is appurtenant has the affirmative duty to do everything possible to keep such Limited Common Area in good and attractive condition at all times. No Owner shall openly or wantonly neglect or fail to perform such duty.

5.08 Landscape Maintenance Easement. Each Owner, by acquiring or in any way becoming vested with an Owner's interest in a Lot, irrevocably grants to the Association an easement to those portions of the Lot that may be exterior to the actual foundations of the Owner's residence Unit constructed upon such Lot; provided, that such easement shall not apply to any portion of such Lot enclosed by a patio fence, if any, which attaches to the residence, in which case the easement shall apply to portions of the Lot exterior to such fence. The purpose of such easement is to provide for uniform landscape maintenance of Common Areas within the

Development. The easement and the area covered thereby shall be deemed to be Common Area for such purposes only but not for purposes of ownership, title or payment of taxes.

5.09 Drainage Easement. A drainage easement exists on, over and across Common Areas and any surface Limited Common Areas within the Development to accommodate the natural drainage flow of runoff water into natural or prepared catch basins or storm drains.

5.10 Storm Drainage Agreement. On or about March 22, 2007, Declarant and Lake Bottom Irrigation Company, a Utah nonprofit corporation (the "Company") entered into that certain agreement entitled **Storm Drainage and Pipeline Construction Agreement (the "Storm Drainage Agreement")**. Pursuant to such agreement, Declarant will construct at certain points upon the Property (upon which the Company owns an easement for an open storm drain canal) a pipeline to carry storm drainage through and from the Development to the Company's downstream shareholders. Declarant, its successors and assigns, including the Association, have certain long term obligations under such agreement, including an annual storm water discharge fee of \$1,200, subject to annual CPI augmentation, if any. The Storm Drainage Agreement was recorded in the Public Records on April 17, 2007, as Entry 56432:2007 Page 1 of 19. Because of its bulk (technical construction and engineering data and schematics) such agreement is not added physically as an exhibit to this Declaration, but is hereby incorporated herein by reference. A copy of such recorded agreement, and any amendments thereto, shall also be kept among the permanent records of the Association.

ARTICLE VI

USE RESTRICTIONS

6.01 Use of Common Areas. The Common Areas shall be used only in a manner: (i) consistent with their community nature; (ii) consistent with the use restrictions applicable to Lots and Units set forth herein; (iii) as set forth in any Rules and Regulations adopted by the Board pursuant to Section 12.03; and (iv) as may be required for purposes deemed necessary by the City.

6.02 Residential Use. The Property is zoned for, and is restricted to, single family residential use and occupancy as defined and interpreted by the City in its Enabling Ordinance or other City zoning ordinances. Each Lot, Unit and Owner are subject to the uses and restrictions imposed by such zoning. No Lot or Unit shall be used, occupied, or altered in violation of such ordinance so as to create a nuisance, or to interfere with the rights of any other Owner. All Units shall be used for private single family residential purposes. The term "residential" as used herein shall be held and construed to exclude individual room letting (including so-called "student housing contracts"), or boarding, and commercial and professional uses which are not the subject of a permit granted by the City pursuant to its then current home occupation ordinance.

6.03 Prohibited Use and Nuisances. The following uses and practices are specifically prohibited, in addition to any additional prohibitions which may, from time to time, be adopted by the Board in Rules and Regulations adopted pursuant to Section 12.03 of the Declaration, or which may be in contravention of provisions of the City's Enabling Ordinance:

- (a) No interior structural, mechanical or electrical systems modifications shall be made to any Unit without prior approval by the DRC as set forth in ARTICLE VII herein.
- (b) No lease of any Unit shall be for less than the whole thereof. Each lease shall contain a provision that the same is subject to the provisions of the Declaration.
- (c) No animals, livestock, or poultry of any kind shall be permitted on any Lot or within any Unit except such domesticated household pets or birds as are allowed pursuant to the Rules and Regulations, including leash laws, adopted by the Board pursuant to Section 12.03 of this Declaration;
- (d) No parking of vehicles of any kind within the Development shall be permitted on either the private or public roads within the Development.
- (e) The total number of motor vehicles owned, leased, or otherwise possessed by Owners and tenants of Units in the Development which may be parked on or operated from the Development is limited to not more than the number of legal parking spaces, excluding handicap and visitor parking spaces, which exist on the Property within the Development as it exists at any given time.
- (f) Owners of Units having a two-car garage shall, upon the expiration of one month following move-in, utilize such garage for the overnight parking of vehicles **and not for the storage of personal property to the exclusion of such vehicles.**
- (g) Visitor and Handicap parking spaces within the Development shall be properly identified as such with appropriate signage approved by the City, and shall be continuously available for visitor parking only, **and not for Owner parking.** Such parking shall be based upon the metric of .25 parking space per dwelling Unit, excluding Handicap parking.
- (h) The Association, pursuant to Section 12.03 of this Declaration, shall adopt a parking enforcement policy that requires strict adherence to the parking provisions set forth in this Section 6.03 and/or in the Enabling Ordinance, and which provides penalties for noncompliance.
- (i) No outside television or radio aerial or antenna, satellite dish or other similar device for reception or transmission shall be permitted on any Lot or the exterior of any Unit except upon written approval of the DRC, which approval shall not be unreasonably denied, or pursuant to Rules and Regulations adopted by the Board under the provisions of Section 12.03 of this Declaration; and

(j) No Unit within the Development shall: (i) contain any coal or wood-burning fireplace, stove, or other similar device unless the same is EPA approved or unless such fireplace, stove or other device is electric or fueled by natural gas only; or (ii) contain any swamp cooler or window-mount air conditioner.

(k) **The foregoing occupancy and parking policies set forth in this Section 6.03 shall not be modified or removed without written approval from the City.**

ARTICLE VII

DESIGN REVIEW

7.01 **Original Construction.** Developer intends to construct the Development, its Lots and Units pursuant to applicable City planning and zoning approvals and permits, development agreements and any construction plans and specifications embodied and set forth in the Enabling Ordinance (herein together called the "Design Guidelines"). All original construction by Declarant pursuant to the Design Guidelines, as they may be amended from time to time, shall be and hereby is approved.

7.02 **Design Review Committee.** The Board of Directors of the Association shall appoint a three-member Design Review Committee (the "DRC"), the purpose and function of which shall be to ensure that all improvements and landscaping within the Development harmonize with and conform to the Design Guidelines. The DRC need not be composed entirely of Owners. If the DRC is not appointed, the Board itself, or certain appointed members thereof, shall perform the duties required of the DRC until it makes such appointments.

7.03 **Submission to DRC.** Except for original construction by Declarant, no Unit, accessory of, or addition to, a Unit which is visible from the Common Areas shall be constructed or maintained, and no alteration, repainting, or refurbishing of the exterior of any Unit or any part thereof, except for glass surfaces, shall be performed, unless complete plans and specifications therefor have first been submitted to and approved by the DRC.

7.04 **Standard.** In deciding whether to approve or disapprove plans and specifications submitted to it, the DRC shall use its best judgment to insure that all improvements, construction, landscaping, and alterations within the Development conform to and harmonize with the Design Guidelines and with existing surroundings and structures. Any residential structure hereafter constructed on any Lot in replacement of a structure previously located thereon shall be constructed in substantially the same configuration, location and architectural style and be approximately the same size as the prior structure; and, if the plans and specifications therefor meet such criteria, the DRC must approve the same.

7.05 **Approval Procedure.** Except as provided in Section 7.03, any plans and specifications submitted to the DRC shall be approved or disapproved by it in writing within 30 days

after submission. In the event the DRC fails to take any action within such specified period, it shall be deemed to have approved the material submitted except in those aspects that such material is not in conformity with the provisions of this Declaration, as to which aspects it shall be deemed disapproved.

7.06 Construction. Once begun, any improvements, construction, landscaping, or alterations approved by the DRC shall be diligently pursued to completion. If reasonably necessary to enable such improvement, construction, landscaping, or alteration, the person or persons carrying out the same shall be entitled to temporarily use and occupy portions of the Common Area in the vicinity of the activity, provided that they shall promptly restore such areas to their prior condition when the use thereof is no longer required.

7.07 Liability for Damages. Neither the DRC nor any member thereof shall be liable for damages by reason of any action, inaction, approval, or disapproval taken or given without malice by the DRC or such member with respect to any request made pursuant to this ARTICLE VII, provided that the DRC's process for approval or disapproval of any action is reasonable and not grossly negligent.

7.08 Declarant's Obligation. Declarant hereby covenants in favor of each Owner: (i) that all original construction by Declarant, including Units, and structural Common Areas within the Development will be architecturally compatible with respect to each other; and (ii) on the date on which a Plat is recorded in the Public Records, all Lots and Common Areas of the Development will be located in the approximate locations shown on such Plat.

ARTICLE VIII

INSURANCE

8.01 Hazard Insurance. The Board shall procure and maintain from a company or companies holding a financial rating of Class A or better from Best's Key Rating Guide, a policy or policies of hazard insurance in an amount or amounts equal to or exceeding the full replacement value (exclusive of the value of land and other items normally excluded from coverage) of all structural Common Areas within the Development, including any recreational amenities, and of all Units and/or Buildings in which multiple Units exist, including roofs, **but not the contents of Units**, with an Agreed Amount Endorsement or its equivalent, if available, or an Inflation Guard Endorsement and such other endorsements as the Board may deem to be reasonable. Such insurance policy or policies shall name the Association as insured for the benefit of the Owners and shall afford protection, to the extent applicable, against at least the following:

- (a) loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by vandalism, malicious mischief, windstorm, and water damage; and
- (b) such other risks as shall customarily be covered with respect to facilities similar in construction, location and use.

8.02 Liability Insurance. The Board shall procure and maintain from a company or companies holding a financial rating of Class A or better from Best's Key Rating Guide a policy or policies of public liability insurance to insure the Association, the Board, the Managing Agent and employees of the Association, and the Owners against claims for bodily injury and property damage arising out of the conditions of the Common Areas, or activities conducted thereon, under a Comprehensive General Liability form. Such insurance shall be for such limits as the Board may decide, but not less than those limits customarily carried in connection with properties of comparable character and usage in the county in which the Development is located, nor less than \$1,000,000 for personal injury and property damage arising out of a single occurrence, such coverage to include protection against water damage liability, liability for non-owned and hired automobiles, liability for the property of others and such other risks as shall customarily be covered with respect to property similar in construction, location and use. The policy shall contain a "Severability of Interest" endorsement which shall preclude the insurer from denying the claim of any Owner because of negligent acts of the Association or other Owners and a cross-liability endorsement pursuant to which the rights of the named insureds, as between themselves, are not prejudiced. The policy shall provide that it may not be canceled or substantially modified by the insurer unless it gives at least 30 days' prior written notice thereof to each insured. Any such coverage procured by the Board shall be without prejudice to the right of the Owners to insure their personal liability for their own benefit at their own expense.

8.03 Additional Insurance; Further General Requirements. The Board shall also procure insurance which shall insure the Common Areas, the Association or the Owners and others against such additional risks as the Board may deem advisable, including indemnification risks required by the terms and provisions of the Storm Drainage Agreement. Insurance procured and maintained by the Board shall not require contribution from insurance held by any of the Owners or their Mortgagees. Each policy of insurance obtained by the Board shall, if reasonably possible, provide:

- (a) a waiver of the insurer's right of subrogation against the Association, the Owners and their respective directors, officers, agents, employees, invitees and tenants;
- (b) that it cannot be canceled, suspended or invalidated due to the conduct of any particular Owner or Owners;
- (c) that it cannot be canceled, suspended or invalidated due to the conduct of the Association without a prior written demand that the defect be cured; and
- (d) that any "no other insurance" clause therein shall not apply with respect to insurance maintained individually by any of the Owners.

8.04 Fidelity Coverage. The Association shall maintain fidelity coverage to protect against dishonest acts on the part of officers, Managing Agents, Directors and employees of the Association and all others (including volunteers), who handle, or are responsible for handling, funds of the Association. In that event, such fidelity coverage shall:

- (a) name the Association as an insured or obligee;

(b) be written in an amount based upon the best business judgment of the Association and shall not be for less than the estimated maximum of funds (including reserve funds) in the custody of the Association or the Managing Agent at any given time during the term of each bond, but in no event be less than a sum equal to three months' monthly allocation of Annual Assessment on all Lots, plus reserve funds;

(c) contain waivers of any defense based upon the exclusion of volunteers, or persons who serve without compensation, from any definition of "employee" or similar expression; and

(d) provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least 30 days' prior written notice to the insured or obligee.

8.05 Review of Insurance. The Board shall periodically, and whenever requested by Owners entitled to exercise at least twenty percent (20%) of the outstanding votes in the Association, review the adequacy of the Association's insurance program and shall report in writing the conclusions and any recommendations made on such review to the Owner of each Unit and to the holder of any Mortgage on any Lot who shall have requested a copy of such report. Copies of every policy of insurance procured by the Board shall be available for inspection by any Owner and any Mortgagee.

8.06 Unit Owners Policies. Each Unit Owner shall be responsible to purchase and maintain in force, appropriate hazard, content and liability insurance as such Owner shall determine is appropriate to such Owner's needs and circumstances. **The Association will not be required to file claims on any of its policies for any damage or liability claim that should have been covered under an Owner's policy required by this Section 8.06.**

8.07 Other Insurance Provisions. All insurance required pursuant to this ARTICLE VIII shall be written by insurers licensed in the state of Utah. Notwithstanding anything in this ARTICLE VIII to the contrary, any insurance required to be obtained by the Association pursuant to the provisions of this ARTICLE VIII shall be required only to the extent that such coverage is obtainable at reasonable rates and is customarily obtained with respect to improvements and facilities having the same or similar characteristics of the property or risks being insured.

ARTICLE IX

RIGHTS OF MORTGAGEES

9.01 Title and Mortgagee Protection. A breach of any of the covenants, provisions, or requirements of this Declaration shall not result in any forfeiture or reversion of title or of any other interest in a Lot or any other portion of the Property. A breach of any of the covenants, provisions, or requirements of this Declaration shall not defeat, impair, or render invalid the lien of or other rights under any Mortgage. Unless and until it enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu thereof, any Mortgagee interested under any Mortgage affecting a Lot or any other portion of the Property shall have no obligation to take any

action to comply with, and may not be compelled to take any action to comply with, any of the covenants, provisions, or requirements of this Declaration (other than those, if any, concerning a consent or approval to be given by a Mortgagee, in the event a Mortgagee's failure to give the same is wrongful). No amendment to this Declaration shall in any way affect the rights of any Mortgagee interested under a Mortgage which is in effect at the time of the amendment concerned or the rights of any successor in interest or title to such Mortgagee, either before or after such Mortgagee or its successor enters into possession or acquires title pursuant to foreclosure, or any arrangement or proceeding in lieu thereof, unless such Mortgagee has consented in writing to such amendment.

9.02 Preservation of Common Area. The Common Areas shall remain substantially of the same character, type and configuration as when such Common Areas became part of the Development. Unless the Association shall receive the prior written approval of : (a) all first Mortgagees of Lots; and (b) the Owners of all Lots, the Association shall not be entitled by act or omission to abandon, partition, subdivide, encumber, sell, transfer or materially modify the Common Areas, except to grant reasonable easements for utilities, ingress and egress, and similar or related purposes.

9.03 Notice of Matters Affecting Security. The Association shall give written notice to any Mortgagee of a Lot requesting such notice whenever:

- (a) there is any material default by the Owner of the Lot subject to the Mortgage in performance of any obligation under this Declaration or the Articles of the Association which is not cured within 60 days after default occurs; or
 - (b) damage to the Common Areas from any one occurrence exceeds \$10,000;
- or
- (c) there is any condemnation or taking by eminent domain of any material portion of the Common Areas.

9.04 Notice of Meetings. The Board shall give to any Mortgagee of a Lot requesting the same, notice of meetings of the Association, and such Mortgagee shall have the right to designate in writing a representative to attend any or all such meetings.

9.05 Right to Examine Association Records. Any Mortgagee shall, upon request, have the same right to inspect the books and records of the Association and receive financial statements as the Owner of the Lot securing the Mortgage.

9.06 Right to Pay Taxes and Charges. Mortgagees may, but shall have no obligation to pay taxes or other charges which are in default and which may or may not have become a charge against any portion of the Common Areas, and may pay overdue premiums on insurance policies pertaining to the Common Areas, or secure new insurance coverage pertaining to the Common Areas on the lapse of a policy. Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

9.07 **No Priority Accorded.** No provision of this Declaration gives or may give a Lot Owner or, any other party, priority over any rights of Mortgagees pursuant to their respective Mortgages in the case of a distribution to Lot Owners of insurance proceeds or condemnation awards for loss to, or taking of, Lots and/or Common Areas.

9.08 **Construction.** In the event another provision or clause of this Declaration deals with the same subject matter as is dealt with in any provision or clause of this ARTICLE IX, the provision or clause which results in the greatest protection and security for a Mortgagee shall control the rights, obligations, or limits of authority, as the case may be, applicable to the Association with respect to the subject concerned.

ARTICLE X

PARTY WALLS

10.01 **General Rules of Law to Apply.** Each wall to be built as a part of the original construction of any Unit and placed substantially on a dividing line between any two Lots shall constitute a party wall and, to the extent not inconsistent with the provisions of this ARTICLE X, the general rules of law regarding party walls and liability for damage due to negligence or willful acts or omissions shall apply thereto.

10.02 **Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

10.03 **Destruction by Fire or Other Casualty.** If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it. If another Owner thereafter makes use of the wall, such other Owner shall contribute to the cost of restoration thereof in proportion to such use; provided that the foregoing provision shall not prejudice the right of any Owner to call for a larger contribution from another Owner under any rule of law regarding liability for negligent or willful acts or omissions (including failure to adequately insure).

10.04 **Weatherproofing Repairs.** Notwithstanding any other provision of this ARTICLE X, an Owner who, by his negligent, willful or omissive act, causes a party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements. Temporary weatherproofing shall be made permanent within three months from the date of damage or destruction.

10.05 **Right to Contribution Runs with Land.** The right of any Owner to contribution from any other Owner under this ARTICLE X shall be appurtenant to the land and shall pass to such Owner's successors in title.

ASSOCIATION BYLAWS

THE ASSOCIATION'S BYLAWS ARE HEREBY EMBODIED IN THIS DECLARATION AS ARTICLES XI, XII AND XIII. THE MISCELLANEOUS PROVISIONS OF ARTICLE XIV OF THIS DECLARATION SHALL BE APPLICABLE TO BOTH THE DECLARATION AND BYLAWS PROVISIONS, AS THE CASE MAY BE.

ARTICLE XI

BYLAWS - MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

11.01 Membership. Every Owner, upon acquiring title to a Lot, shall automatically become a member of the Association and shall remain a member thereof until such time as his ownership of such Lot ceases, for any reason, at which time his membership in the Association with respect to such Lot shall automatically cease and the successor Owner shall become a member. Membership in the Association is mandatory, appurtenant to, and is not separated from, the ownership of the Lot giving rise thereto.

11.02 Voting Rights. The Association shall initially have two classes of voting memberships, Class A and Class B, votes of both classes being of equal value as to all matters,

except for determining the presence or absence of a quorum at Association meetings, in which case such determination shall be made as if there were no Class B voting rights:

(a) **Class A.** Each Owner, including Declarant, shall be a Class A member entitled to one vote for each Lot in which such Owner holds the interest required for Association membership (See Section 11.03 as to voting by multiple Owners.)

(b) **Class B.** Declarant shall be the only member entitled to Class B voting rights which shall entitle Declarant to one vote for each Class A vote outstanding at the time (including those Class A voting rights to which Declarant is entitled). Class B voting rights shall terminate and become a nullity on the earlier of:

(i) the expiration of 60 days following the date on which the total outstanding Class B voting rights to which Declarant is entitled for Lots/Units sold to third party purchasers equal 120; or

(ii) on December 31, 2013; or

(iii) upon surrender of the Class B voting rights by Declarant in writing to the Association.

Upon termination of the Class B voting rights, all members, including Declarant, shall have equal Class A voting rights as to all matters.

11.03 Multiple Ownership Interests. In the event there is more than one Owner of a particular Lot, the single vote relating to such Lot shall be exercised as such Owners may determine between or among themselves, but in no event shall more than the single vote appurtenant to such Lot be cast with respect to any single issue. A vote cast at any Association meeting or by written consent by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the entire vote attributable to the applicable Lot unless an objection is made at the meeting or in writing by another Owner of the same Lot, in which event no vote will be counted with respect to such Lot, except to determine the presence or absence of a quorum.

11.04 Records of Ownership. Every Owner shall promptly cause to be duly filed of record in the Public Records the conveyance document (or in the case of a contract buyer, a copy of the recorded sales contract or notice of interest) to him of his Lot and shall file a copy of such conveyance document with the Secretary of the Association, who shall maintain a record of ownership of all Lots. Any Owner who mortgages his Lot or any interest therein shall notify the Secretary of the Association of the name and address of the Mortgagee and also of the release or change of any such Mortgage as it occurs. The Secretary of the Association shall maintain all such information in a book entitled "Records of Ownership." The Association may at any time obtain and rely on information from the Public Records regarding the Owners and Mortgagees of Lots.

11.05 Place of Meeting. Meetings of the Association shall be held at such suitable place convenient to the Owners as may be designated by the Secretary of the Association in the notice thereof.

11.06 Annual Meetings. Annual meetings of the membership of the Association shall be held each year beginning in the year 2008 on such month, day and time as is set forth in the notice therefor; provided, that after the first such annual meeting, a month other than the month of the initial meeting may be chosen if it is deemed by the membership to be more convenient. At such annual meetings there shall be elected Directors of the Board, as needed, pursuant to the provisions of the Declaration. Financial and budget reports shall also be presented at such meetings as well as other business of the Association properly placed before such meeting.

11.07 Special Meetings. The President shall call a special meeting of the Owners: (a) as directed by a resolution of the Board; or (b) upon a petition signed by Owners holding at least thirty percent (30%) of the total Class A votes of the Association having been presented to the Secretary. No business shall be transacted at a special meeting except as stated in the notice therefor unless consented to by a majority of the Owners present thereat, either in person or by proxy.

11.08 Notice of Meetings. The Secretary shall mail a notice of each annual or special meeting stating the purpose thereof as well as the time and place of the meeting to each Owner of record at least 10, but not more than twenty 20, days prior to such meeting. **The mailing of notice by prepaid U.S. Mail or by delivery in person shall be considered notice served.**

11.09 Quorum. Except as provided in Section 13.10, Owners present in person or by proxy at any membership meeting duly called pursuant to notice shall constitute a quorum at all meetings, both annual and special; provided, however, that such Owners collectively be entitled to cast at least forty percent (40%) of the total Association votes eligible to vote.

11.10 **Adjourned Meetings.** If any meeting of Owners cannot be organized because a quorum is not present, the Owners who are present either in person or by proxy may adjourn the meeting to a time not less than 48 hours nor more than 30 days from the time the original meeting was called, at which time the requirements for a quorum shall be reduced by one-half (½) of that required at the immediately preceding meeting.

11.11 **Officers.** The Association shall have a President, a Vice President, a Secretary and a Treasurer, **all of whom shall be elected by and from the Board.** The Board may, if needed, appoint an Assistant Secretary and Assistant Treasurer who need not be from the Board. Only the offices of Secretary and Treasurer may be filled by the same person. The officers shall be elected by the Board in an organizational meeting of the Board **to be held immediately following each annual meeting of Owners at which any member of the new Board has been elected;** provided, that until the Board is elected by the Owners pursuant to Section 11.13, the Association duties may be performed by Declarant pursuant to the provisions of Section 11.12.

(a) **President.** The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and of the Board. The President shall have all of the general powers and duties that are usually vested in the office of president of a similar type association.

(b) **Vice President.** The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor Vice President is able to act, the Board shall appoint some other member of the Board to do so on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed on him by the Board.

(c) **Secretary.** The Secretary shall keep the minutes of all meetings of the Board and the minutes of all meetings of the Association. He shall have charge of such books and records as the Board may direct and he shall, in general, perform all duties incident to the office of secretary of a similar type association.

(d) **Treasurer.** The Treasurer shall have responsibility for Association funds and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. He shall be responsible for the deposit of all money and any other valuable effects in the name and to the credit of the Association in such depositories as may from time to time be designated by the Board.

11.12 **Initial Composition of Board: Declarant Control.** Declarant alone shall have the right: (a) to select the initial Board of Directors which may be composed of three Directors, none of whom need be Owners; or (b) to perform the duties of the Board in place of the Board. Such right of the Declarant to appoint the Board, or to perform its duties, shall remain in Declarant until the termination of the Class B voting rights as provided in Section 11.02(b), at which time the Association shall proceed to elect members of the Board in accordance with the Association's Bylaws as set forth in Section 11.13.

11.13 **Board of Directors: Owner Control; Composition, Election, Vacancies.** Subject to the provisions of Section 11.12, the Board shall be composed of seven Directors, each of whom

shall be an Owner (or an officer, director, or agent of a non-individual Owner). At the first annual meeting of Owners to elect a Board of Directors, three shall be elected to a three-year term, two to a two-year term, and two to a one-year term. As Directors' terms expire, new Directors shall be elected for three-year terms and shall serve on the Board until their successors are elected. Vacancies on the Board shall be filled by the remaining Directors from among the Owners. An appointee shall serve until the next annual meeting of Owners when either he or his successor shall be elected for the unexpired term of the Director he was appointed to replace. The Owners may increase the maximum number of Directors to nine at any annual meeting of Association members at which such increase is properly placed on the notice and agenda for such meeting.

11.14 Indemnification of Board. Each of the Directors shall be indemnified and held harmless by the Lot Owners against all costs, expenses, and liabilities whatsoever (excluding any fraudulent and/or criminal actions) including, without limitation, attorneys fees reasonably incurred in connection with any proceeding in which such Director may become involved by reason of being, or having been, a member of the Board.

11.15 Board Meetings, Quorum, Board Action. The Board of Directors shall establish its rules for meetings, whether regular or special. A majority of current Board members shall constitute a quorum of the Board. The action of a majority or those Directors attending a meeting at which a quorum is present shall be sufficient to constitute the action of the Board. Action by consent shall require the unanimous written consent of all serving Directors.

ARTICLE XII

BYLAWS - DUTIES AND POWERS OF THE ASSOCIATION

12.01 Duties of the Association. The Association, through its Board of Directors, is responsible for the maintenance of Common Areas; the determination, imposition and collection of Assessments; the enforcement of the provisions of this Declaration; and, in general, the preservation of the residential quality and character of the Development to the benefit and general welfare of the Owners. Without limiting any other duties which may be imposed upon the Association by its Articles, Bylaws, or the Declaration, the Association shall have the obligation and duty to do and to perform the following:

- (a) Accept all Owners as members of the Association;
- (b) Accept title to all Common Area personal property conveyed to it, whether by Declarant or by others, but may refuse if the same is not free and clear of liens and encumbrances;
- (c) Maintain, repair and replace any structural Common Areas;
- (d) In connection with its duties to maintain and repair Common Areas, the Association shall provide maintenance and repair upon any private roads and drives within the Development, including any Limited Common Area parking. The Association shall also maintain and repair all Common Area landscaping and plantings;

- (e) Pay and account for all items of Common Expenses;
- (f) Obtain and maintain in force the policies of insurance or bonds required of it by the provisions ARTICLE VIII of the Declaration; and
- (g) Perform its obligations pursuant to the Storm Drainage Agreement; and
- (h) File or cause to be filed as required U. S. Income Tax Return for Homeowners Associations (IRS Form 1120H).

12.02 Powers and Authority of the Association. The Association shall have all the powers set forth in its Articles and Bylaws, together with its general powers as a nonprofit corporation, and the power to do any and all things which may be authorized, required or permitted to be done by the Association under and by virtue of the Declaration and the Bylaws, as well as the Utah Revised Nonprofit Corporation Act. Without in any way limiting the generality of the foregoing, the Association shall have the following powers:

(a) At any time and from time to time, and without liability to any Owner for trespass, damage or otherwise, to enter upon any Lot for the purpose of maintaining and repairing such Lot or any improvement thereon if for any reason the Owner fails to maintain and repair such Lot or improvement as required by the provisions of the Declaration, and to levy a Specific Assessment therefor upon the Lot of such Owner. The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Declaration, the Bylaws or any Rules and Regulations promulgated by the Board pursuant to Section 12.03 hereof; or to enforce by mandatory injunction, or otherwise, any of the provisions of the Declaration, the Bylaws and such Rules and Regulations.

(b) In fulfilling any of its duties under the Declaration, including its duties for the maintenance, repair, operation or administration of the Common Areas (and Lots to the extent necessitated by the failure to do so of the Owners of such Lots), or in exercising any of its rights to construct improvements or other work upon any of the Common Areas, the Association shall have the power and authority to obtain, contract and pay for:

- (i) Construction, maintenance, repair and landscaping of the Common Areas on such terms and conditions as the Board shall deem appropriate;
- (ii) Such insurance policies or bonds as the Board may deem appropriate for the protection or benefit of the Association, the members of the Board, and the Owners;
- (iii) Such Common Area related utility services as the Board may from time to time deem necessary or desirable;
- (iv) The services of architects, engineers, attorneys, certified public accountants, and such other professional or nonprofessional services as the Board

may deem desirable:

(v) Fire, police and such other protection services as the Board may deem desirable for the benefit of the Owners or any portion of the Development; and

(vi) Such materials, supplies, equipment, services and labor as the Board may deem necessary.

12.03 Association Rules and Regulations. The Board from time to time, subject to and not inconsistent with the provisions of the Declaration or the Bylaws, may adopt, amend, repeal and enforce reasonable Rules and Regulations governing, among other things: (a) all matters concerning the use and enjoyment of the Common Areas, and the conduct of Owners, their guests and invitees within the Development; (b) the collection and disposal of refuse; and (c) uses and nuisances pertaining to the Development.

12.04 Managing Agent. The Association may engage (but is not required to do so) a responsible corporation, partnership, firm, person or other entity, as the Managing Agent to manage, control, and administer the Common Areas, subject at all times to direction by the Board, with such administrative functions and powers as shall be delegated to the Managing Agent by the Board. The compensation of the Managing Agent shall be reasonable as specified by the Board. Any agreement appointing a Managing Agent shall be terminable by either party, with or without cause, and without payment of any termination fee, upon 30 days' written notice thereof. Any Managing Agent shall be an independent contractor and not an employee.

12.05 Limitation of Liability. No member of the Board, acting in good faith, shall be personally liable to any Owner, guest, tenant or any other person for any error or omission of the Association, its representatives and employees, the Board, any committee of the Board, or the Managing Agent.

ARTICLE XIII

BYLAWS - ASSESSMENTS

13.01 Personal Obligation and Lien. Each Owner shall, by acquiring or in any way becoming vested with his interest in a Lot/Unit, be deemed to covenant with, and agree to pay to the Association the Assessments described in this ARTICLE XIII, as and when levied, together with late payment fees, interest and costs of collection, if and when applicable. All such amounts shall be, constitute, and remain: (a) a charge and continuing lien upon the Lot with respect to which the Assessment is made until fully paid; and (b) the personal, joint and several obligation of the Owner or Owners of such Lot at the time the Assessment is levied. No Owner may exempt himself or his Lot from liability for payment of Assessments by waiver of his rights in the Common Areas, or by abandonment of his Lot. In a voluntary conveyance of a Lot, the grantee thereof shall be jointly and severally liable with the grantor for all unpaid Assessments, late payment fees, interest and costs of collection, including reasonable attorney's fees, all of which shall be a charge on the Lot at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor.

13.02 Purpose of Assessments. Assessments levied by the Association shall be used exclusively for the purpose of promoting the Development and the collective interests of the Owners therein, including, but not limited to, payment of the Common Expenses and any other expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions or purposes under the Declaration, the Articles, the Bylaws, or the Rules and Regulations.

13.03 Annual Assessments. Annual Assessments shall be computed and assessed against all Lots in the Development based upon advance estimates of the Association's cash requirements, as set forth in Section 13.04, to provide for the payment of Common Expenses.

13.04 Annual Budget. Annual Assessments shall be determined on the basis of a fiscal year ending December 31; provided, however, the first fiscal year shall begin upon the close of sale of the first Lot/Unit in the Development to the first purchasing Owner. On or before December 15 of each fiscal year thereafter, the Board shall prepare and furnish to each Owner an operating budget for the upcoming fiscal year. The operating budget for the first fiscal year shall be prepared and furnished to each Owner on or before such Owner's initial purchase. The budget shall itemize the estimated cash requirements for such fiscal year, anticipated receipts, and any deficit or surplus from the previous operating period. The budget shall serve as the supporting document for the Annual Assessments for each upcoming fiscal year, and as the major guideline under which the Development shall be operated during such fiscal period.

13.05 Notice and Payment of Annual Assessments. Except with respect to the short period of its first fiscal year, as provided in Section 13.04, the Association shall notify each Owner as to the amount of the Annual Assessment against his Lot on or before December 15 of the year preceding the year for which such Annual Assessment is made. Each Annual Assessment shall be payable in 12 equal monthly installments, with each such installment due and payable on the first day of each calendar month during the fiscal year to which the Annual Assessment relates; provided that the Annual Assessment for the first fiscal period shall be based upon that portion of such fiscal period as follows the close of sale of the first Lot/Unit in the Development to the first purchasing Owner, and shall be payable in such installments and at such times as the Association, in the sole discretion of its Board, may determine. The failure of the Association to give timely notice of any Annual Assessment as provided herein shall not be deemed a waiver of, or modification in any respect of, the provisions of the Declaration, or a release of any Owner from the obligation to pay such Annual Assessment, or any other Assessment; but the date when the payment shall become due in such case shall be deferred to a date at least 15 days after notice of such Annual Assessment shall have been given to the Owner in the manner provided in Section 14.01.

13.06 Initial and Transfer Fees. Each Owner (other than Declarant), shall be required to prepay at the time of purchase of his Lot/Unit, **whether as a first time or a subsequent Owner**, a sum equal to three times the then monthly installment of the Annual Assessment, which sum shall be in addition to any proration of the Annual Assessment which may be due for the month in which such purchase takes place. The fees required by this Section 13.06 shall become part of the Association's general fund to be utilized as necessary for payment of Common Expenses and as administration costs in setting up new Owner files.

13.07 Maximum Annual Assessment. Until January 1 of the calendar year immediately following the conveyance of the first Lot/Unit to an Owner, the maximum Annual Assessment shall

not exceed the amount per Lot that is determined by the Board pursuant to the provisions of Section 13.04. From and after January 1 of the calendar year immediately following the conveyance of the first Lot/Unit to an Owner, the maximum Annual Assessment may be increased by the Board each calendar year thereafter (non-cumulatively) by not more than twenty percent (20%) above the maximum Annual Assessment for the previous year, without the vote of Owners entitled to cast a majority of the Association votes at an annual or special meeting of the Association.

13.08 Special Assessments. The Association may levy Special Assessments for the purpose of defraying, in whole or in part: (a) any Common Expense or other expenses not reasonably capable of being fully paid or anticipated with funds generated by Annual Assessments; or (b) the cost of any construction, reconstruction, or unexpectedly required addition to, or replacement of, infrastructure or improvements within the Common Areas. Any such Special Assessment shall be apportioned among and assessed to all Lots in the same manner as Annual Assessments. Such Special Assessments must be assented to by at least sixty percent (60%) of the votes of the membership which Owners present in person or represented by proxy are entitled to cast at a meeting duly called for such purpose. Written notice setting forth the purpose of such meeting shall be sent to all Owners at least 10, but not more than 30, days prior to such meeting date.

13.09 Uniform Rate of Assessment. All Annual and Special Assessments authorized by Sections 13.03 and 13.08, respectively, shall be fixed at a uniform rate for all Lots/Units: provided, however, that no Annual or Special Assessments shall be due and payable until a Lot has been both fully improved with a completed Unit and occupancy taken for the first time by an Owner or tenant of such Owner. During the period of time that Declarant holds the Class B voting rights in the Association, if assessed fees collected by the Association fail to adequately meet Common Expenses, then Declarant shall pay any shortfall.

13.10 Quorum Requirements. The quorum at any Association meeting required for any action authorized by Section 13.08, shall be as follows: At the first meeting called, the presence of Owners or proxies entitled to cast sixty percent (60%) of the total Association votes eligible to vote shall constitute a quorum. If a quorum is not present at the first meeting, or any subsequent adjourned meeting, another meeting may be called (subject to the notice requirements set forth in said Section 13.08) at which the quorum requirement shall be one-half ($\frac{1}{2}$) of the quorum which was required at the immediately preceding meeting.

13.11 Specific Assessment. In addition to the Annual Assessment and any Special Assessment authorized pursuant to Sections 13.03 and 13.08, respectively, the Board may levy at any time a Specific Assessment: (a) on any Lot/Unit especially benefitted (i.e., benefitted to a substantially greater degree than any other Lot/Unit) by any improvement to adjacent roads, sidewalks, planting areas or other portions of the Common Areas made on the written request of the Owner of the Lot/Unit to be charged; (b) on any Lot/Unit the Owner or occupant of which shall cause any damage to the Common Areas necessitating repairs; and (c) on any Lot/Unit as to which the Association shall incur any expense for maintenance or repair work performed, or enforcement action taken, pursuant to any of the provisions of the Declaration. The aggregate amount of any such Specific Assessment shall be determined by the cost of such improvements, repairs, maintenance, or enforcement action taken, including all overhead and administrative costs, and all attorney's fees and costs, if any, and shall be allocated among the affected Lots/Unit according to

the magnitude of special benefit, or cause of damage, or maintenance, or repair work, or enforcement action, as the case may be. Such Assessment may be also made in advance of the performance of work requested to be furnished by the Association. If a special benefit arises from any improvement which is part of the general maintenance or operation obligations of the Association, it shall not give rise to a Specific Assessment against the Lots/Units benefitted.

13.12 Certificate Regarding Payment. Upon the request of any Owner or prospective purchaser or encumbrancer of a Lot, and upon the payment of a reasonable fee to the Association to cover administrative costs, the Association shall issue a certificate stating whether or not payment of all Assessments respecting such Lot are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who rely thereon in good faith.

13.13 Effect of Nonpayment; Remedies. Any Assessment (whether Annual, Special or Specific) not received within 10 days of the date on which it, or any installment thereof, becomes due shall be subject to a late charge not to exceed 5% thereof, which, together with interest and costs of collection, shall be, constitute, and remain a continuing lien on the affected Lot/Unit. If any Assessment is not received within 10 days after the date on which it becomes due, the amount thereof shall also bear interest from the due date at the rate of one and one-half percent (1 1/2%) per month; and the Association may bring an action against the Owners personally liable therefor, or may foreclose its lien against the Lot/Unit pursuant to provisions of Title 57, Real Estate, of the *Utah Code*, as amended, applicable to the exercise of powers of sale in deeds of trust, by foreclosure as a mortgage, or in any other manner permitted by law. Any judgment obtained by the Association in connection with the collection of delinquent Assessments and related charges shall include reasonable attorney's fees, court costs, and every other expense incurred by the Association in enforcing its rights. Failure of the Association to promptly enforce any remedy granted pursuant to this Section 13.13 shall not be deemed a waiver of any such rights.

13.14 Subordination of Lien to Mortgages. The lien of the Assessments provided herein shall be subordinate to the lien of any Mortgage given in the first instance to a bank, savings and loan association, insurance company or other institutional lender; and the holder of any such Mortgage or a purchaser who comes into possession of or becomes the Owner of a Lot/Unit by virtue of the foreclosure of such Mortgage, or the exercise of a power of sale under such Mortgage, or by deed in lieu of foreclosure, shall take free of such Assessment lien as to any Assessment installment which accrues or becomes due prior to the time such holder or purchaser comes into possession or ownership of such Lot/Unit; provided, that to the extent there are any proceeds of the sale on foreclosure of such Mortgage, or by exercise of such power of sale, in excess of all amounts necessary to satisfy all indebtedness secured by and owed to the holder of such Mortgage, the lien shall apply to such excess. No sale or transfer of a Lot/Unit in connection with any foreclosure of a Mortgage shall relieve the same from the lien of any Assessment installment, or portion thereof, thereafter becoming due.

13.15 No Abatement. No diminution or abatement of any Assessments shall be claimed or allowed for inconvenience, annoyance, or discomfort arising from: (a) any construction (or lack of construction) within the Development; (b) the making of (or failure to make) any repairs or improvements to, or the maintenance of, any Common Areas of the Development; or (c) any action taken to comply with the provisions of the Declaration or with the laws, ordinances, regulations, rules, or orders of any applicable governmental authority.

GENERAL PROVISIONS

14.01 Notices. Any notice required or permitted to be given to any Owner under the provisions of this Declaration shall be deemed to have been properly furnished if delivered or mailed, postage prepaid, to the person named as the Owner, at the latest address for such person, as reflected in the records of the Association at the time of delivery or mailing. Any notice required or permitted to be given to the Association may be given by delivering or mailing the same to the Managing Agent or any officer or Board member of the Association or to the Association's Registered Agent as reflected in the Association's records at the Office of the Division of Corporations and Commercial Code for the State of Utah. Any notice required or permitted to be given to the DRC may be given by delivering or mailing the same to the President or Managing Agent of the Association, or to any member of the DRC.

14.02 Amendment. This Declaration may be amended (as opposed to terminated) by an instrument recorded in the Public Records which is executed either: (a) by Owners who collectively hold at least sixty percent (60%) of the total outstanding votes in the Association; or (b) by the Association's President and Secretary, who shall certify that the required sixty percent (60%) vote was obtained in a meeting of Owners, or by consent of Owners, and is so documented in the permanent records of the Association. No amendment to any provision of this Declaration which has the effect of diminishing or impairing any right, power, authority, privilege, protection, or control accorded to Declarant (in its capacity as Declarant), shall be accomplished or effective unless the instrument through which such amendment is purported to be accomplished is specifically consented to in writing by Declarant.

14.03 Action Without Meeting; Action by Written Ballot. Any action that may be taken at any annual or special meeting of the Association by the Owners may be taken without a meeting and without prior notice by written consents upon compliance with the provisions of Section 16-6a-707 of the Utah Revised Nonprofit Corporation Act. Similarly, action may be taken by written ballot upon compliance with the provisions of Section 16-6a-709 of such Act.

14.04 Declarant's Rights Assignable. All or any portion of the rights of Declarant under this Declaration, or in any way relating to the Development, may be assigned without the consent of any Owner or Owners.

14.05 Interpretation. The captions pertaining to the ARTICLE and Section numbers of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, and any gender shall include all genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof, which shall remain in full force and effect. The laws of the State of Utah shall govern the validity, construction and enforcement of this Declaration.

14.06 Condemnation. If at any time or times an insubstantial or minor part of the Common Area or any part thereof shall be taken or condemned by any authority having the power of eminent domain, all compensation and damages shall be payable to the Association and shall be

used by the Association to the extent necessary for restoring or replacing any improvements on the remainder of the Common Area. In the event of any other taking or condemnation, the interests of the Association, the Owners and Mortgagees shall be as they may appear.

14.07 Covenants to Run with Land. This Declaration and all the provisions hereof shall constitute covenants to run with the land, or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Declarant, all parties who hereafter acquire any interest in a Lot or Unit, their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or occupant of a Lot or Unit shall comply with, and all interests in all Lots or in the Common Areas shall be subject to, the terms and provisions of this Declaration and the provisions of any Rules and Regulations, agreements, instruments, and determinations contemplated by this Declaration. By acquiring any interest in a Lot or Unit, the party acquiring such interest consents to, and agrees to be bound by, each and every covenant, condition, and provision of this Declaration.

14.08 Enforcement of Restrictions. The Association, any Owner, or any Mortgagee, shall have the right to exercise or seek any remedy at law or in equity to interpret, enforce compliance with, or obtain redress for violation of, this Declaration. The prevailing party in any such action shall be entitled to collect court costs and reasonable attorney's fees.

14.09 Duration/Termination. This Declaration shall remain in effect until such time as there is recorded in the Public Records, following the approval of the City authorizing such termination, an instrument of termination which incorporates and recites the authority of such municipality and which is executed by at least eighty percent (80%) of the total outstanding votes of the Association, plus the Mortgagee of each and every Lot.

14.10 Effective Date. This Declaration, and any amendment or supplement thereto, shall take effect upon being filed for record in the Public Records.

EXECUTED by Declarant on the day and year first above written.

INDEPENDENCE AVENUE, LLC

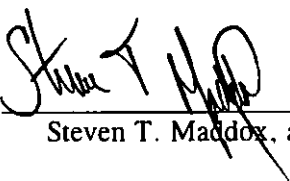
By:  _____
Steven T. Maddox, a Manager

EXHIBIT A

to

**DECLARATION OF PROTECTIVE EASEMENTS,
COVENANTS, CONDITIONS AND RESTRICTIONS**

INDEPENDENCE AVENUE

Real property located in Provo City, Utah County, Utah, described as follows:

PLAT A BOUNDARY DESCRIPTION

BEGINNING AT A POINT WHICH LIES S.89°22'23"W. 1850.28 FT ALONG THE SECTION LINE AND NORTH 211.92 FT FROM THE SOUTH $\frac{1}{4}$ CORNER OF SECTION 35, TOWNSHIP 6 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN; AND RUNNING THENCE N.31°33'47"W. 329.74 FT; THENCE S.58°26'13"W. 111.50 FT; THENCE S.31°33'47"E. 76.12 FT; THENCE S.58°26'13"W. 214.11 FT; THENCE S.37°08'18"E. 356.05 FT; THENCE N.58°26'13"E. 169.52 FT; THENCE N.21°37'02"E. 38.65 FT; THENCE N.31°33'47"W. 77.57 FT; THENCE N.58°26'13"E. 90.56 FT TO THE POINT OF BEGINNING. (AREA = 2.49 ACRES)

EXHIBIT B

to

**DECLARATION OF PROTECTIVE EASEMENTS,
COVENANTS, CONDITIONS AND RESTRICTIONS**

INDEPENDENCE AVENUE

THIS DESCRIPTION OF THE ADDITIONAL LAND IS SET FORTH AND ATTACHED IN THIS EXHIBIT B TO THE DECLARATION SOLELY FOR THE PURPOSES OF IDENTIFICATION OF EXPANSION LAND. THE DECLARATION IS NOT INTENDED AS, AND SHOULD NOT BE DEEMED, TO CONSTITUTE ANY LIEN, ENCUMBRANCE, RESTRICTION, OR LIMITATION UPON ANY PORTION OF THE EXPANSION LAND, UNLESS AND UNTIL SUCH PORTION IS ADDED TO THE DEVELOPMENT IN ACCORDANCE WITH THE PROVISIONS OF THE DECLARATION.

Real property located in Provo City, Utah County, Utah. described as follows:

NORTH EXPANSION BOUNDARY DESCRIPTION

BEGINNING AT A POINT WHICH LIES S.89°22'23"W. 2022.89 FT ALONG THE SECTION LINE AND NORTH 494.77 FT FROM THE SOUTH 1/4 CORNER OF SECTION 35, TOWNSHIP 6 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN; AND RUNNING THENCE N. 31°33'47"W. 725.77 FT; THENCE NORTHWESTERLY 203.70 FT ALONG THE ARC OF A 1566.00 FT RADIUS CURVE TO THE RIGHT, THE CHORD BEARS N. 27°50'12"W. 203.56 FT; THENCE N. 24°06'37"W. 41.61 FT TO AN EXISTING REBAR PROPERTY CORNER; THENCE N. 24°06'37"W. 19.29 FT; THENCE EAST 57.04 FT; THENCE N. 21°04'41"W. 595.01 FT TO THE EAST RIGHT-OF-WAY LINE OF INTERSTATE 15; THENCE FOLLOWING SAID RIGHT OF WAY LINE S.00°05'26"E. 567.74 FT; THENCE SOUTHEASTERLY 122.84 FT ALONG THE ARC OF A 1637.02 FOOT TEN CHORD SPIRAL CURVE TO THE RIGHT, THE CHORD BEARS S.0°01'55"E. 122.84 FT; THENCE CONTINUING ALONG SAID RIGHT-OF-WAY S.0°10'30"W. 400.10 FT; THENCE S.37°08'18"E. 694.72 FT ALONG THE NORTHEASTERLY RIGHT-OF-WAY LINE OF THE DENVER AND RIO GRANDE WESTERN RAILROAD; THENCE N.58°26'13"E. 214.11 FT; THENCE N.31°33'47"W. 76.12 FT; THENCE N.58°26'13"E. 111.50 FT TO THE POINT OF BEGINNING.
(AREA = 9.48 ACRES)

SOUTH EXPANSION BOUNDARY DESCRIPTION

BEGINNING AT A POINT WHICH LIES S.89°22'23"W. 1541.33 FT ALONG THE SECTION LINE AND SOUTH 294.35 FT FROM THE SOUTH 1/4 CORNER OF SECTION 35, TOWNSHIP 6 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN; AND RUNNING THENCE N.31°33'47"W. 343.41 FT TO A POINT ON THE WESTERLY LINE OF INDEPENDENCE AVENUE; THENCE N.31°33'47"W. 246.78 FT; THENCE S.58°26'13"W. 90.56 FT; THENCE S.31°33'47"E. 77.57 FT; THENCE S.21°37'02"W. 38.65 FT; THENCE S.58°26'13"W. 169.52 FT; THENCE S.37°08'18"E. 338.64 FT ALONG THE NORTHEASTERLY RIGHT-OF-WAY LINE OF THE DENVER AND RIO GRANDE WESTERN RAILROAD; THENCE N.89°00'00"E. 299.76 FT TO THE POINT OF BEGINNING. (AREA = 2.79 ACRES)