

**DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS OF
SCOTT AVENUE PARK A PLANNED UNIT DEVELOPMENT**

This Declaration of Covenants, Conditions, and Restrictions of Scott Avenue Park a Planned Unit Development is executed on this 21~~4~~ day of March, 2005, on behalf of Len Pickens Construction, Incorporated the ("Declarant") who is the sole owner of the land which is the subject of this Declaration (hereinafter the "Declarant"). This document is not intended to create a Condominium within the meaning of the provisions of the Utah Condominium Ownership Act, Section 57-8-1, et seq., Utah Code Annotated, 1953, as amended.

RECITALS

WHEREAS, capitalized terms in this Declaration are defined in Article I; and

WHEREAS, the Declarant holds title to the tract of real property located in Salt Lake County, Utah, which is particularly described in Article II of this Declaration. It is intended that when development is completed, each of the numbered lots shown on the subdivision plat filed in the records of the Salt Lake County Recorder shall be deemed a single Unit of the planned unit development subdivision, as approved by Salt Lake County, and as described in this Declaration, which shall, together with an undivided percentage interest in and to the common areas and facilities, subject to the covenants, conditions, limitations restrictions and easements set forth herein, be conveyed to Owners in fee simple; and

WHEREAS, by this Declaration, Declarant intends to establish a common scheme and plan of mutually beneficial restrictions for the possession, use, enjoyment, repair, maintenance, restoration and improvement of the Property and the interests therein conveyed and to establish thereon a planned unit development featuring single family Units in accordance with the terms hereof;

NOW, THEREFORE, it is hereby declared that the Property which is the subject of this Declaration shall be held, sold, conveyed, leased, rented, encumbered and used, subject to the following Declaration and its covenants, restrictions, limitations, and conditions, all of which shall constitute covenants which run with the title to the real property and shall be binding on and inure to the benefit of the Declarant, its successors and assigns and all owners of all or any part of the Property, together with their grantees, successors, heirs, executors, administrators, devisees and assigns, all as set forth herein.

ARTICLE I. DEFINITIONS

When used in this Declaration (including in that portion hereof headed "Recitals") the following terms shall have the meaning indicated.

1. "Articles" or "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of the Association, which shall be filed with the Utah State Department of Commerce, Division of Corporations and Commercial Code at or about the time this Declaration is filed for record.

2. "Association" shall mean and refer to Scott Avenue Park Homeowners Association, Inc., a Utah nonprofit corporation.

3. **"Board of Trustees"** or **"Board"** shall mean and refer to the governing board of the Association, which shall be appointed or elected in accordance with the Declaration, the Articles of Incorporation and Bylaws of the Association.

4. **"Bylaws"** shall mean and refer to the Bylaws of the Association as amended from time to time.

5. **"Common Areas"** shall mean, refer to, and include:

(a) the real property and interests in real property which this Declaration submits to the provisions of the Act, including all landscaping, sidewalks, walkways, parking areas or roadways located thereon (but excluding all Units as herein defined);

(b) those common areas and facilities and limited common areas and facilities specifically set forth and designated as such on the map;

(c) all other parts of the project normally in common use or necessary or convenient to its use, existence, maintenance, safety or management; and

(d) all common areas and facilities and all limited common areas and facilities as defined in or by applicable law, whether or not expressly listed herein or on the map.

6. **"Common Expense Fund"** shall mean and refer to the fund created or to be created pursuant to the provisions of Article V of this Declaration and into which all monies of the Association shall be deposited. In the discretion of the Board, two or more separate and distinct funds may be created and maintained hereunder, such as for operating expenses and for capital expenses, both or all of which together shall constitute the Common Expense Fund.

7. **"Common Expenses"** shall mean and refer to those costs and expenses, actual and estimated, arising out of or connected with the exercise of authority under this Declaration and/or law, the Articles or Bylaws.

8. **"Declaration"** shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions of Scott Avenue Park a Planned Unit Development, as the same may hereafter be modified, amended and supplemented.

9. **"Declarant"** shall mean and refer to Len Pickens Construction Inc., a Utah Corporation, and/or any successor thereof which, either by operation of law or through a voluntary conveyance, transfer, or assignment, expressly comes to stand in the same relation to the Property as did its predecessor. Accordingly, by way of example but not limitation, unless such result is expressly provided, an acquiror of a subdivided lot for construction or development and resale shall not be a successor Declarant.

10. **"Eligible Mortgagee"** shall mean and refer to a First Mortgagee, which has requested notice of certain matters from the Association in accordance with Section 1 of Article XI of this Declaration.

11. **"FNMA"** shall mean and refer to the Federal National Mortgage Association.

12. **"First Mortgage"** shall mean any Mortgage, which is not subject to any lien or encumbrance except liens for taxes or other liens, which are given priority by statute.

13. **"First Mortgagee"** means any person named as a Mortgagee under a First Mortgage, or any successor to the interest of any such person under a First Mortgage, which First Mortgage is not subject to any lien or encumbrance except liens for taxes or other liens which are given priority by statute.

14. **"Limited Common Areas"** shall mean any Common Areas designated as reserved for use by the Owner of a certain Unit or Units to the exclusion of the other Owners in the PUD. Any parking areas that are identified on the Plat as Limited Common Areas are permanently assigned to specific Units, as an appurtenance to such Units, for the exclusive use of such Units. The Plat designates the Unit or Units to which each of the Limited Common Areas is reserved and appurtenant, if any.

15. **“Manager”** shall mean and refer to the person, firm, or company, if any, designated from time to time by the Association to manage, in whole or in part, the affairs of the Association and PUD.

16. **“Master Plan”** shall mean the plans (Phase I, II and possibly III) for development of the entire PUD including future Phases at the discretion of the Declarant according to the Plat, plans and all related documents which are on file relating to the official records of and for the PUD.

17. **“Member”** shall mean and refer to an Owner as a member of the Association.

18. **“Mortgage”** shall mean any mortgage, deed of trust, or other document pledging any portion of a Unit or interest therein as security for the payment of a debt or obligation.

19. **“Mortgagee”** shall mean a beneficiary of a Mortgage as well as named Mortgagee.

20. **“Option to Expand”** is defined in Article XII.

21. **“Owner”** shall mean the person or persons, including the Declarant, owning in fee simple a Unit in the PUD and an undivided interest in the common areas and facilities in the percentage specified and established in the Declaration, as such ownership is shown by the records of the County Recorder of Salt Lake County, State of Utah. The term “Owner” shall not refer to any Mortgagee (unless such Mortgagee has obtained title in fee simple to a Unit pursuant to a judicial or non judicial action, including, without limitation, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure) or to any person or persons purchasing a Unit under contract (until such contract is fully performed and legal title conveyed of record).

22. **“Person”** shall mean and refer to a natural person, a corporation, a partnership, a trustee, or any other legal entity.

23. **“Plat”** shall mean and refer to the map for Scott Avenue Park Planned Unit Development, recorded in the office of the County Recorder of Salt Lake County, Utah, and all amendments thereto.

24. **“Property”** shall mean and refer to the entire tract of real property now or hereafter covered by the Plat. A description of the real property covered by the Plat on the effective date of this Declaration is set forth in Article II of this Declaration.

25. **“PUD”** (an acronym for “Planned Unit Development”) shall mean and refer to the Property and the plan of development and ownership of the Property created and governed by this Declaration, the Articles and Bylaws.

26. **“Unit”** shall mean and refer to any of the separately numbered and individually depicted and described, subdivided lots of the Property which are intended for independent use and ownership, as the same are now or hereafter shown on the Plat.

27. **“VA”** shall refer to the Department of Veterans Affairs.

ARTICLE II. BASIC PROVISIONS

2.1 **Property Description.** The property initially associated with the PUD which is owned by the Declarant and which shall be subdivided, held, transferred, sold, conveyed, and occupied subject to the provisions of this Declaration consists of the first phase for development of and upon the real property described on Exhibit “A” attached hereto, which property is situated in Salt Lake County, State of Utah.

2.2 **Submission.** The Declarant hereby subjects the Property (currently made up of the Phase I property described in 2.1) to the provisions of this Declaration of Covenants, Conditions, and Restrictions. Phase I shall contain eight (8) Units. The Property is and shall be subject to the easements, covenants, conditions, restrictions, uses, limitations and obligations set forth herein. Each and all of the provisions hereof shall be deemed to run with the land and shall

be a burden and a benefit to the Declarant, its successors and assigns, and any person acquiring or owning an interest in the Property or any Unit of the PUD, and their heirs, executors, successors, assigns, administrators, devisees and representatives.

2.3 Master Plan. The final Plat for each of the phases, as approved and recorded, and the associated Master Plan; the associated Plans and Profiles for Phase I, and the Plans and Profiles for each of the other phases, which shall be similar in substance, as they are filed and approved; and the associated plans for the open spaces, sidewalks, roadways, etc., as they are each recorded with the Salt Lake County Recorder are hereby incorporated into this Declaration by this reference. Among other things, the Master Plan and the documents known as Plans and Profiles for each of the phases shall describe the building types, architectural style and size and plans for the various Units, which shall include the land surface, and the structures, situated thereon, according to the depictions and descriptions shown on the official Plat, as may be amended from time to time. The Property shall accordingly be subdivided into Units and Common Areas subject and according to the said Master Plan and Plats. The actual Units shall be those which are described on the Plats which are made subject to the provisions of this Declaration and associated with the PUD by initial Declaration or any supplementation to this Declaration and on the attached Exhibit "A".

2.4 Additional Phases. It is specifically acknowledged that a second phase for development to contain an additional 6 Units, has been pre-approved by Salt Lake County, for annexation into the PUD. The real property upon which the second phase for development, tentatively called Scott Avenue Park Planned Unit Development, Phase Two, according to the Declarant's Master Plan.

The said additional phase shall be described on an additional plat of Scott Avenue Park Planned Unit Development and may be annexed to the PUD and made subject to this Declaration by supplementation of and/or amendment to this Declaration and the Plat, as provided in Article XII.

ARTICLE III. THE ASSOCIATION

3.1 Membership. Every Owner shall be a Member of the Association. Membership shall be mandatory, appurtenant to, and shall not be separated from the Unit to which it pertains. Membership will begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner of a Unit. (Notwithstanding the foregoing, a developer of a Unit which has not been completed and approved for occupancy shall not be a Member in respect to such Unit until it is approved for occupancy.) If title to a Unit is held by more than one person, the membership appurtenant to that Unit shall be shared by all such persons in the same proportionate interest and by the same type of tenancy in which title to the Unit is held. An Owner shall be entitled to one membership for each Unit owned by such Owner. Each membership shall be transferred automatically by conveyance of that Unit. Membership in the Association may not be transferred except in connection with the transfer of a Unit. The Association shall make available to the Owners, Mortgagees and the holders, insurers and guarantors of the First Mortgage on any Unit current copies of the Declaration, Articles, Bylaws and other rules governing the PUD and other books, records and financial statements of the Association. The Association shall make available to prospective purchasers current copies of the Declaration, Bylaws, and other rules governing the PUD and the most recent audited financial statement, if one has been prepared. The term

“available” as used in this Section 1 shall mean available for inspection, upon prior request, during normal business hours or under other reasonable circumstances.

3.2 Board of Trustees. Until such time as the responsibility for electing the Board of Trustees of the Association terminates, the Declarant shall have the exclusive right to appoint and remove all such Trustees. This exclusive right of the Declarant to appoint the Trustees shall terminate at the end of the Control Period. The “Control Period” shall begin upon incorporation and continue until it is terminated by the Declarant as provided in the Bylaws, but no later than the earlier of (a) one hundred twenty (120) days after ninety (90%) percent of the Units have been conveyed pursuant to purchase agreements; or (b) the date which is five (5) years after the date upon which the first Unit is conveyed to a purchaser; provided, however, that a conveyance or series of conveyances by Declarant to a developer, or as a part of a reorganization, shall not trigger the end of the Control Period.

3.3 Votes. Each Member shall be entitled to one (1) equal vote for his, her or its Unit, provided that the Unit has been awarded a certificate of occupancy. The number of votes appurtenant to each Unit shall be permanent, and shall not change in the event an Owner increases or decreases the size of his Unit relative to other Units. However, if two or more Units are combined into a single Unit, the Owner of such Unit shall be entitled to the number of votes, and shall be assessed, according to the number of Units originally contained in such Unit. In the event that there is more than one Owner of a particular Unit, the votes relating to such Unit shall be exercised as such Owners may determine among themselves. Except as provided above, no Unit shall have more than one vote, regardless of the number of persons having an ownership interest in the Unit. The votes cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the votes attributable to the Unit concerned unless an objection is immediately made by another Owner of the same Unit. In the event such an objection is made, the votes involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists. The Declarant shall have full voting rights with respect to each Unit which it owns.

3.4 Professional Management. The Board may carry out through the Manager those of its functions, which are properly the subject of delegation. The Manager so engaged shall be an independent contractor and not an agent or employee of the Association, shall be responsible for managing the PUD for the benefit of the Association and the Owners, and shall, to the extent permitted by law and by the terms of the agreement with the Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Association itself. Any such management contract shall provide that it may be terminated by the Association for cause upon thirty (30) days notice. Any such management contract shall run for a reasonable period from one to three (1-3) years and be renewable for consent of the Association and the management. The Manager may be required to provide fidelity insurance or bonding, pursuant to 6.5, below.

3.5 Amplification. The provisions of the Section may be amplified by the Articles and the Bylaws; provided, however, that no such amplification shall substantially alter or amend any of the rights or obligations of the Owners set forth in this Declaration.

ARTICLE IV. PROPERTY RIGHTS IN COMMON AREAS AND UNITS

4.1 **Common Areas.** The PUD shall include the various parts, recreational facilities, sidewalks, roadways and amenities which are expressly or impliedly designated as Common Areas on the Plat, and intended for the benefit of all Members.

4.2 **Undivided Ownership Interest in Common Areas.** Each Member shall have an equal undivided ownership interest in the Common Areas. Accordingly, such interest shall be stated in the form of a fraction, where the numerator is one (1) and the denominator is the same as the total number of Units. In accordance with the total number of Units indicated on the initial submitted plat, Phase One, the ownership interest shall be one-eighth (1/8) for each Unit's Owner. Such rights and the easements associated therewith (see, for example, Article IX) shall be appurtenant to and shall pass with title to each Unit and in no event shall be separated therefrom. Any Member may delegate and shall be presumed to have delegated, unless the Manager is notified to the contrary, the right and easement of use and enjoyment described herein to any family members, household guest, tenant, lessee, contract purchaser, or other person who resides in such Member's Unit.

ARTICLE V. ASSESSMENTS

5.1 **Agreement to Pay Assessments.** By acceptance of a deed or contract of conveyance and transfer of a Unit, an Owner covenants and agrees with all other Owners and the Association to be bound by and to pay in accordance with the Assessments for which provision is made in this Declaration; and further agrees that the Association shall have the power, as described in the Bylaws to establish and collect assessments.

5.2 **Annual Assessments.** Commencing with the year, or remaining portion thereof, during which the first Unit was conveyed, annual assessments shall be computed and assessed by the Association in equal proportionate amounts against all Units in the PUD which are subject to assessment as follows:

A. **Common Expense.** Annual assessments shall be based upon advance estimates of the Association's cash requirements to provide for payment of all estimated expenses arising out of or connected with the maintenance and operation of the Common Areas, and furnishing common services and other common items to the Units. Such estimated expenses may include, without limitation, the following: expenses of management; operation and maintenance costs; real property taxes and special assessments on the Common Areas (and on the Units which have been conveyed until those Units are separately assessed); premiums for all insurance that the Association is required or permitted to maintain hereunder; repairs and maintenance of the Common Areas; landscaping; reasonable wages of Association employees, including fees for a Manager; utility charges, including charges for utility services to Units to the extent not separately metered or billed; legal and accounting fees; any deficit remaining from a previous period; creation of an adequate contingency reserve, major maintenance reserve and / or sinking fund; creation of an adequate reserve fund for maintenance repairs, and replacement of those Common Areas that must be replaced on a periodic basis; and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under or by reason of this Declaration. The aggregate of all such items shall constitute the Common Expenses, and all funds received from assessments under this

Section 5.2 A shall be part of the Common Expense Fund. Two separate and distinct funds may, in the Board's discretion, be created and maintained hereunder, one for operating expenses and one for capital expenses which together shall constitute the Common Expense Fund.

B. Apportionment. Common Expenses shall be equally apportioned among and assessed to all Units for which a Certificate of Occupancy has been issued and their Owners. The Declarant shall be liable for the amount of any assessments against Units owned by it subject to the provisions of Article V.

C. Annual Budget. It shall be the duty of the Board to prepare and submit to the Association Members a proposed operating budget for each calendar year and may include, in addition to anticipated expenses, a reserve fund for periodic maintenance, repair and replacement of improvements, amenities, features and facilities which are part of or associated with the Common Areas. The proposal shall be made in accordance with the estimates of the Board, consistent with Section 5.2A. The budget shall itemize the estimated expenses, anticipated receipts and account for any deficit or surplus from the prior period of operation. The Association, in the manner described in the Bylaws, may adopt an annual budget.

D. Notice and Payment. Except with respect to the first fiscal year, the Board of Trustees shall notify each Owner in writing as to the amount of the annual assessment against his or her Unit on or before December 15 each year for the fiscal year beginning on January 1 next following. Except as otherwise provided by the Board, each annual assessment shall be payable in twelve equal monthly installments, one such installment due on the first day of each calendar month during the fiscal year to which the assessment relates; provided, however, the annual assessment for the first fiscal year shall be based upon such portion of the first fiscal year. All unpaid installments of any annual assessment shall bear interest at the rate established by the Board not to exceed fifteen percent (15%) per annum from fifteen (15) days after the date each such installment became due until paid. The Board of Trustees shall also have the right to assess a late fee of up to five percent (5%) of any assessment installment not paid within fifteen (15) days following the due date thereof, representing liquidated damages. In addition, in the event that any installment of the annual assessment is not paid within fifteen (15) days of the date such installment becomes due, the Association may, at its option, and upon fifteen (15) days prior written notice to the Owner, accelerate the due date for all remaining unpaid installments of the annual assessment for the remainder of the fiscal year and all accrued but unpaid interest thereon. Payment of the annual assessment installments so accelerated shall be due at the expiration of said fifteen (15) day notice period and interest shall accrue on the entire sum at the rate established by the Board not to exceed fifteen percent (15%) per annum from such date until paid in full. The failure of the Board of Trustees to give timely notice of any annual assessment as provided herein shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay such assessment or any other assessment.

E. **Inadequate Funds.** In the event that the Common Expense fund proves inadequate at any time for whatever reason, including nonpayment of any Owner's assessment, the Board of Trustees may, on behalf of the Association, levy additional assessments in accordance with the procedure set forth in 5.3 below, except that the vote therein specified shall be unnecessary.

5.3 **Special Assessments.** The Association shall have authority to levy special assessments to provide for: unbudgeted repairs or replacements; reconstruction or improvement of Common Areas; and/or to recover extraordinary expenses necessarily incurred by the Association. Each Owner agrees to be bound by the approved acts of the Association. Special assessments for repairs, replacements or improvements to the Common Areas shall be adopted only by the Association's Members, by the vote of two-thirds of the total number of Units which would be entitled to vote at a meeting of the Association, if all Units were represented at such meeting. The Board, by unanimous vote, may approve and authorize an extraordinary expense, provided that it is necessary that such expense be incurred to protect the interests of the Association, and there is not sufficient time to call a meeting of the Association, pursuant to 5.5 below. The Association, through its Board of Trustees, shall give notice in writing of each such special assessment and of the time for payment thereof; provided, however, that no payment shall be due in a period of time which is less than thirty (30) days after such notice shall have been given. In the event that an Owner fails to pay a special assessment at the time it becomes due and payable, interest shall accrue thereon at a rate established by the Board, which rate shall not exceed fifteen (15%) percent per annum. The Board shall also have the right to assess a late fee of up to five (5%) percent of any Special Assessment. The Owners agree that any such late fee shall represent liquidated and agreed damages for the administrative expenses, losses and costs incurred by the Association as a result of such failure to pay.

5.4 **No Assessment Upon Uncompleted Units.** There shall be no assessment upon any Unit which has not been completed and granted a Certificate of Occupancy.

5.5 **Notice and Quorum for Any Action Authorized Under Sections 5.1 and 5.3.** Assessments shall be authorized by the Members of the Association. Written notice of any meeting called for the purpose of taking any action authorized under Sections 5.1 or 5.3 of this Article shall be sent to all Members as of the Record Date (applicable to that meeting) no less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast fifty percent (50%) of all the votes (exclusive of suspended voting rights) of Members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half ($\frac{1}{2}$) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

5.6 **Lien for Assessments.** All sums assessed to Owners of any Unit within the PUD pursuant to the PUD pursuant to the provisions of this Article V, together with late charges and interest thereon as provided herein, shall be secured by a lien on such Unit in favor of the Association. To evidence a lien for sums assessed pursuant to this Article V, the Board of Trustees shall comply with Utah law, and shall, at a minimum, prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the Unit and a description of the Unit. Such a notice shall be signed and acknowledged by a duly authorized officer of the Association and may be recorded in the office

of the County Recorder of Salt Lake County, State of Utah. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by sale or foreclosure conducted in accordance with the provisions of law applicable to the exercise of powers of sale or judicial foreclosure of deeds of trusts or mortgages or in any other manner permitted by law, in such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees), and such cost and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any assessment against the Unit which shall become due during the period of foreclosure, and all such assessments shall be secured by the lien being foreclosed. The Board of Trustees shall have the right and power in behalf of the Association to bid in at any foreclosure sale and to hold, lease, mortgage or convey the subject Unit in the name of the Association.

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

5.8 Personal Liability of Purchaser. The personal obligation of an Owner to pay unpaid assessments against his Unit as described in Section 7 of this Article V shall not pass to successors in title unless expressly assumed by them. Provided, however, a lien to secure unpaid assessments shall *not* be affected by the sale or transfer of the Unit unless foreclosure or acceptance of a deed in lieu of foreclosure by a First Mortgagee is involved, in which case the foreclosure will extinguish the lien for any assessments that were payable before the foreclosure sale, but shall not relieve any subsequent Owner from paying further assessments.

5.9 Evidence of Payment of Annual and Special Assessments. 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 (a) that all annual, special and specific assessments (including interest, costs and attorneys' fees, if any, as provided in Section 2 above) have been paid with respect to any specified Unit as of the date of such certificate, or (b) if all annual, special and specific assessments have not been paid, the amount of such assessments (including interest, costs and attorneys' fees, if any) due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificates, which charges must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matter therein stated as against any bond fide purchaser of, or Mortgagee on, the Unit in question.

5.10 Specific Assessments. The Association, by action of its Board of Trustees, shall have the power to levy a Specific Assessment against any Unit or Units for fines or fees charged pursuant to the provisions of this Declaration or the Bylaws of the Association and/or to recover expenses incurred by the Association in providing benefits, services or items which are not provided to all Units, whether such expenses are incurred (by way of example and not limitation): (a) upon request of the Owner for specific items or services relating to the Unit, (b) as a consequence of the conduct of, or failure to perform by, the Owner(s) or their tenants,

invitees or guests, (c) as a result of the intentional or negligent acts of an Owner or the family, guest, tenants, or invitees of an Owner, (d) due to the failure of an Owner of a Unit which shares a Twin Home Building to maintain, reconstruct, repair, etc., the exterior of such structure; or (e) in the event that the Association incurs costs and/or expenses in connection with the exercise of its right to establish compliance with the community standard. A Specific Assessment shall be governed as fully as any other assessment by the provisions of Sections 5.1, 5.6, 5.7 and 5.8, without limitation intended, of this Article. Each Owner agrees to be responsible for the negligent or intentional acts of such Owner's own activities, or those of such Owner's family, guests, tenants or invitees.

ARTICLE VI. OPERATION AND MAINTENANCE

6.1 Maintenance of Improvements on the Units; Establishment of Community Standard. Each Unit shall be maintained by the Owner thereof so as not to detract from the appearance of the Property and so as not to affect adversely the value or use of any other Unit. The Association, through its Board of Trustees, or by vote of its Members, may establish a community standard which shall be applicable to the appearance of the Property and of the exteriors of structures on the Property; which standard each Owner shall make best efforts to meet or exceed. The Association shall have no obligation regarding maintenance or care of Units except as set forth in this Declaration

6.2 Operation and Maintenance by Association. The Association shall provide for such maintenance and operation of the Common Areas as may be necessary or desirable to make them appropriately usable in conjunction with the Units and to keep them clean, functional, attractive and generally in good condition and repair. The Board of the Association shall be charged with establishing rules to control and regulate the use of the various common area facilities, features and amenities and the Common Area, generally. Accordingly, the rights of the Members shall be subject to the rules for control and regulation of the facilities, as they may be published, from time to time, by the Board on behalf of the Association. The rights of the Members shall further be subject to the rights of the Association as provided herein (including, by way of example, the Association's right to maintain and provide regular care to lawns and landscaping upon the Units as provided below). The Association, by vote of its Members may change the nature or quality of the facilities, features and/or amenities, or any rules adopted by the Board in respect to the use thereof. The expenses incurred by the Association for all such purposes shall be paid for with funds from the Common Expense Fund. The maintenance and operation shall include, but not necessarily be limited to, the following:

6.2.1 Maintenance and repair of the private roadways and sidewalks within the Properties;

6.2.2 Snow removal from the private roadways and as may be reasonably determined by the Association, from the sidewalks within the Properties;

6.2.3 Maintenance and regular care for the lawns and landscaping within the Common Areas, including all trees, shrubs, grass, walks, etc., on or around the Units within the area which is designated on the Plat as "Homeowners Association Maintenance Area";

6.3 Maintenance of Exteriors. Each Owner shall be charged with the duty to maintain, in a manner which is consistent with the community standard, the exterior of each

structure which is associated with that Owner's Unit, which maintenance may include, but shall not necessarily be limited to: paint, repair, replacement and care of roofs, gutters, downspouts, foundations, window wells, fences, exterior building surfaces, exterior door and other exterior improvements. Such exterior maintenance shall also include glass surfaces and window screens or patios included on any Unit. The rights and duties of the Owners to maintain building exteriors shall be subject to the right of the Association, after having first provided such Owner(s) with written notice and a reasonable opportunity to comply, to take appropriate action, including self-help, to establish compliance with the community standard for maintenance, and to charge all costs, together with interest at the maximum rate then allowed by law, up to eighteen (18%) percent per annum, to be assessed against the Owner and the Unit and collected as a specific assessment. In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available. The Association shall have the right of entry to any Unit to perform emergency repairs and/or to do other work necessary for maintenance of the building exteriors. In the event that the need for maintenance or repair of the building exteriors is caused through the willful or negligent acts of its Owner(s), or through the willful or negligent acts of the family, guest, tenants, or invitees of the Owner(s), of the Unit needing such maintenance or repair, the cost of such exterior maintenance shall be added to and become a part of the assessment to which such Unit is subject.

6.4 Utilities. The Owner shall pay for all utility services furnished to each Unit except utility services which are not separately billed or metered to individual Units by the utility or other party furnishing such service. The Association shall pay such bills, which are not separately metered and charge an appropriate share to each Unit and Owner as part of the Common Expenses.

6.5 Insurance. During initial development and construction, and before a Certificate of Occupancy for any Unit has been issued, the Association may, in its reasonable discretion, rely upon the general contractor(s) or developer(s) on the project to provide insurance coverage's which shall satisfy one or more of the following. At all times after the issuance of the first Certificate of Occupancy, the Association shall maintain in force -- or, if such insurance is optional, may elect to maintain -- insurance which meets the following minimum requirements:

A. Hazard Insurance. A "master" or "blanket" type policy of property insurance shall be maintained covering: Common Areas and fixtures, building service equipment, personal property and supplies comprising a part of the Common Areas or, regardless of whether or not such property is part of the elements of the Common Area, owned by the Association, and which are of a class typically encumbered by Mortgages held by FNMA or other similar institutional Mortgage investors; but excluding land, foundations, excavations, and other items normally not covered by such policies. The Association may elect to maintain, or agree with the Unit Owners to maintain a master policy of hazard insurance covering one or more, up to all, of the Buildings. If required by law, or to qualify for government loan guaranty or insurance for which the Declarant has elected to seek approval, the Association may elect to maintain hazard insurance in a blanket or master policy covering all structures on all Units, including any improvements which are permanent parts of such structures (other than the interior content thereof). Provided that hazard insurance is not provided hereunder for all Units pursuant to the foregoing, the premiums on insurance covered pursuant to (ii), above, shall be common expenses, but shall be assessed specially pursuant to Section 5.3 of this Declaration. In the discretion of the Board, a policy of flood insurance may also be maintained covering

all Common Areas within the PUD (hereinafter "Insurable Property") in an amount deemed appropriate.

References herein to a "master" or "blanket" type policy of property insurance are intended to denote single entity insurance coverage. As a minimum, such "master" or "blanket" policy shall afford protection against loss or damage by fire, by other perils normally covered by the standard extended coverage endorsement, and by all other perils which are customarily covered with respect to projects similar to the PUD in construction, location, and use, including (without limitation) all perils normally covered by the standard "all risk" endorsement where such endorsement is available. Such "master" or "blanket" policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all elements of the PUD covered by such policy, exclusive of land, foundations, excavation, and other items normally excluded from coverage. The insurance policy shall include either of the following endorsements to assure full insurable value replacement cost coverage: (1) a Guaranteed Replacement Cost Endorsement (under which the insurer agrees to replace the insurable property regardless of the cost) and, if the policy includes a co-insurance clause, an Agreed Amount Endorsement (which waives the requirement for co-insurance; or (2) a Replacement Cost Endorsement (under which the insurer agrees to pay up to one hundred percent of the property's insurable replacement cost but no more) and, if the policy includes a co-insurance clause, an Agreed Amount Endorsement (which waives the requirement for co-insurance). The maximum deductible amount for such policy covering the Common Areas shall be the lesser of Ten Thousand Dollars (\$10,000) or one percent (1%) of the policy face amount. However, for losses related to individual Units that are covered by such a policy, the deductible related to each individual Unit shall be One Thousand Dollars (\$1,000.00). Funds to cover these deductible amounts shall be included in the Association's operating reserve account.

(i) The name of the insured under each policy required to be maintained by the foregoing Section 6.5(A) shall be the Association for the use and benefit of the individual Owners. (Said Owners shall be designated by name, if required.) Notwithstanding the requirement of the two immediately foregoing sentences, each such policy may be issued in the name of an authorized representative of the Association, including any Insurance Trustee with whom the Association has entered into an Insurance Trust Agreement, or any successor to such Trustee, for the use and benefit of the individual Owners. Loss payable shall be in favor of the Association (or Insurance Trustee), as a trustee for each Owner and each such Owner's Mortgagee. Each Owner and each such Owner's Mortgagee, if any, shall be beneficiaries of such policy in the percentage of common ownership. Evidence of insurance shall be issued to each Owner and Mortgagee upon request.

(ii) Each policy maintained by the foregoing item 6.5.A, on a Home Building shall contain the standard mortgage clause, or equivalent endorsement (without contribution), commonly accepted by private institutional mortgage investors in the area in which the PUD is located. If FNMA (or FHLMC) is a holder of one or more Mortgagees on Units within the PUD such mortgage

clause shall name such holder or its servicer of such Mortgages as Mortgagee. If FNMA's servicer is named as mortgagee in such mortgage clause, such servicer's name shall be followed therein by the phrase "its successors and assigns." In addition, such mortgage clause or another appropriate provision of each such policy shall provide that the policy may not be canceled or substantially modified without at least ten (10) days' prior written notice to the Association and to each Mortgagee which is listed as a scheduled holder of a Mortgage in the policy.

(iii) Each policy required to be maintained by the foregoing Section 6.5(A), shall provide, if available, for the following: a waiver of the right of subrogation against Owners individually; the insurance is not prejudiced by any act or neglect of individual Owners which is not in the control of such Owners collectively; and the policy is primary in the event the Owner has other insurance covering the same loss.

(iv) Each policy required to be maintained by the foregoing item 6.5.A shall also contain or provide the following: (1) "Inflation Guard Endorsement", if available; (2) Building Ordinance or Law Endorsement", if the enforcement of any building, zoning, or land use law will result in loss or damage, increased cost of repairs or reconstruction, or additional demolition and removal costs (The endorsement must provide for contingent liability from the operation of building laws, demolition costs, and increased costs of reconstruction).

B. Fidelity Bonds. The Association may maintain in force and pay the premiums for "blanket" fidelity bonds for all officers, directors and employees of the Association and for all other persons handling or responsible for funds of or administered by the Association whether or not that individual receives compensation for services. Furthermore, where the Association has delegated some or all of the responsibility for the handling of funds to a Manager, the Board may require the Manager to provide "blanket" fidelity bonds, for the Manager's officers, employees and agents handling or responsible for funds of or administered on behalf of, the Association. The total amount of fidelity bond coverage required shall be based upon the Board's best business judgment and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the Manager, as the case may be, at any given time during the term of each bond. A lesser amount of fidelity insurance coverage is acceptable for the PUD so long as the Association and the Manager adhere to the following financial controls: (1) the Association or the Manager maintains separate bank accounts for the working account and the reserve account, each with appropriate access controls, and the bank in which funds are deposited sends copies of the monthly bank statements directly to the Association (2) the Manager maintains separate records and bank accounts for each Association that uses its services and the Manager does not have authority to draw checks on or to transfer funds from the Association's reserve account; or (3) two members of the Board must sign any checks written on the reserve account. The bonds required shall meet the following additional requirements: (1) the fidelity bonds shall name the Association as obligee; (2) the bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions; (3) the premiums on all bonds for the Association (except for premiums on fidelity bonds maintained by the Manager for its officers, employees and agents) shall be paid by the Association as part of the

Common Expenses; and (4) the bonds shall provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium) without a least ten (10) days' prior written notice to the Association, to any Insurance Trustee, and to each servicer of loans on behalf of FNMA.

C. **Liability Insurance.** The Association shall maintain in force, and pay the premium for a policy providing comprehensive general liability insurance coverage covering all of the Common Areas, public ways in the PUD, and all other areas of the PUD that are under the Association's supervision. Such coverage shall be for at least One Million Dollars (\$1,000,000) for bodily injury, including deaths of persons, and property damage arising out a single occurrence. If such policy does not include "severability of interest" in the terms the policy shall include a special endorsement to preclude an insurer's denial of any Owner's claim because of negligent acts of the Association or any other Owner. Such policy shall provide that it may not be canceled or substantially modified, by any party, without at least ten (10) days' prior written notice to the Association.

D. **Insurance Without Prejudice to Rights of Owners.** All insurance provided pursuant to this Section 6.5 shall be provided without prejudice to the right of each Unit Owner to insure his or her own Unit for his or her benefit.

6.6 **Individual Hazard Insurance for Units.** Except in the event that the Association provides and maintains in force hazard insurance for all Units pursuant to Section 6.5A of this Declaration, it shall be the duty and obligation of the Owner of each Unit to obtain and maintain insurance against loss or damage by fire and other hazards for the building and improvements on the Owner's Unit. The insurance to be maintained shall meet or exceed the standards for such insurance, which are described in 6.5A, and shall accordingly, but without limitation, be in an amount not less than one hundred (100%) percent of current replacement cost of all improvements associated with such Unit, exclusive of land, foundations, excavation and other items normally excluded from coverage. Each such policy shall name the Association as an additional insured. The maximum deductible amount for such policy shall be One Thousand (\$1,000.00) Dollars.

ARTICLE VII. DAMAGE OR DESTRUCTION

7.1 **Association as Attorney in Fact.** All of the Owners irrevocably constitute and appoint the Association their true and lawful attorney in fact in their name, place and stead for the purpose of dealing with the Association's insurer, in the event that damage or destruction occurs which is insured by an Association policy, as hereinafter provided. Acceptance by any grantee of a deed from the Declarant or from any Owner shall constitute an appointment by said grantee of the Association as his or her attorney-in-fact as herein provided. As attorney-in-fact, the Association shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or other instrument with respect to the interest of an Owner which may be necessary or appropriate to exercise the powers herein granted. All insurance proceeds from such policies shall be payable to the Association except as other wise provided in this Declaration.

7.2 **Definition of Repair and Reconstruction.** Repair and reconstruction of the improvements as used herein means restoring the Property and improvements to the Property,

which were the subject of the Association's obligation to insure, to substantially the same condition in which it existed prior to the damage or destruction, with each Unit and the Common Areas having substantially the same boundaries as before.

7.3 Procedure. In the event all or any part of the Property covered by insurance written in the name of the Association is damaged or destroyed, the Association shall proceed as follows:

A. Claims. The Board or its duly authorized agent shall file and adjust all insurance claims. As soon as practicable after an event causing damage to or destruction of any part of the PUD, the Board or its agent shall obtain complete and reliable estimates of the costs to repair and reconstruct the part of the PUD damaged or destroyed. If the proceeds of the insurance maintained by the Association equal or exceed the estimated costs to repair and reconstruct the damage or destroyed part of the PUD, such repair and reconstruction shall be carried out.

B. Insufficient Insurance. If the proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the PUD, such repair and reconstruction may nevertheless be carried out in the discretion of the Board. The Association shall levy a special assessment sufficient to provide funds to pay the actual costs of such repair and reconstruction to the extent that such insurance proceeds are insufficient to pay such costs. Such special assessment shall be allocated and collected as provided in Article V Section 5.3 hereof, except that the vote therein specified shall be unnecessary. Further levies may be made in like manner if the amounts collected (together with the proceeds of insurance) are insufficient to pay all actual costs of such repair and reconstruction.

7.4 Repair or Reconstruction. If the damage or destruction is to be repaired or reconstructed as provided above, the Association shall, as soon as practicable after receiving the said estimate of costs, commence and diligently pursue to completion the repair and reconstruction of that part of the PUD damaged or destroyed. The Association may take all necessary or appropriate action to effect repair and reconstruction, as attorney in fact for the Owners, and no consent or other action by any Owner shall be necessary in connection therewith, except as otherwise expressly provided herein. The PUD shall be restored or repaired to substantially the same condition in which it existed prior to the damage or destruction. Any restoration or repair of the PUD shall be performed substantially in accordance with the Declaration and the original architectural plans and specifications.

7.5 Disbursement of Funds for Repair and Reconstruction. If repair or reconstruction is to occur, the insurance proceeds held by the Association and any amounts received from assessments made pursuant to Section 3.D of this Article VII shall constitute a fund for the payment of costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for costs of repair and reconstruction shall be made from insurance proceeds; if there is a balance after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners equally according to their interests therein.

7.6 Owner's Insurance. By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the

full replacement cost of all insurable improvements as provided in Article XI, above; and further covenants and agrees that, in the event of damage to or destruction of structures on or comprising the Unit, the Owner of such Unit shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved by the Board. Alternatively, the Owner shall clear the Unit of all debris and ruins, and maintain the Unit in a neat and attractive, landscaped condition consistent with the community-wide standard. The Owner shall pay all costs which are not covered by insurance proceeds.

ARTICLE VIII. CONDEMNATION

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

8.2 **Proceeds.** All compensation, damages and other proceeds from any such taking by power of eminent domain (hereinafter "Condemnation Award") shall be made payable to the Association to be held in trust for Unit Owners and their First Mortgagees as their interests may appear, and shall be distributed by the Board of Trustees, on behalf of the Association as herein provided.

8.3 **Repair and Reconstruction.** Any repair and reconstruction necessitated by condemnation shall be governed by the provisions specified in Article VII hereof for cases of Damage or Destruction; provided, however, that the provisions of said article dealing with sufficiency or insufficiency or insurance proceeds shall not be applicable.

ARTICLE IX. EASEMENTS

9.1 **Easement of Enjoyment.** Each Member shall have an equal non-exclusive right and easement of reasonable use, access and enjoyment in and to the Common Areas, except as limited herein. Each Owner (including Owners of Units constructed on the Additional Land) shall have an unrestricted right of ingress or egress to and from its Unit over and across such Common Areas, and the non-exclusive right to the reasonable use of all parking stalls within the Common Areas subject to any rules or restrictions adopted by the Board of Trustees. Each Owner shall also have the exclusive right to use the Limited Common Area parking stalls which are designated for the Owner's Unit on the Plat. Each Owner shall also have the exclusive right to use and enjoy any other Limited Common Areas that may be designated for exclusive use by such Owner.

9.2 **Limitation on Easement.** A Member's equal undivided interest, right and easement of use and enjoyment concerning the Common Areas shall be subject to the following:

A. The right of the Association, after providing reasonable notice and an opportunity for a hearing given to a Member, to suspend a Member's voting right in the Association and a Member's right to the use of any recreational facilities included in the

Common Areas (i) for any period during which an assessment on such Member's Unit remains unpaid; (ii) for a period not exceeding sixty (60) days for any infraction by such Member of the provisions of this Declaration or of any rule or regulation promulgated by the Association; and (iii) for successive 60-day periods if any such infraction is not corrected during any prior 60-day suspension period;

B. The right of the Association, for the protection of the interests of all Members and for the preservation of the facilities, to impose reasonable limitations on the number of guests per Member who at any given time are permitted to use the Common Areas;

C. The right of any governmental or quasi-governmental body having jurisdiction over the Property to access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the property for purposes of providing police and fire protection, transporting school children; and providing other governmental or municipal service.

9.3 Easements of Encroachment. There shall be reciprocal appurtenant easements for encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area, and between adjacent Units due to the unintentional placement or settling or shifting of improvements constructed, reconstructed, or altered thereon to a distance of not more than three (3) feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement, or a predecessor in interest to such Person.

9.4 Easements for Development, Maintenance, Utilities, Etc.

A. There are hereby reserved to the Declarant, so long as the Declarant owns any property described on Exhibit "A" or "B" of this Declaration, to the Association, and to the designees of each (which may include, without limitation, any governmental or quasi-governmental entity and any utility company) perpetual non-exclusive easements upon, across, over, and under all of the Property (but not through a structure) to the extent reasonably necessary for the purpose of monitoring, replacing, repairing, maintaining and operating roads, walkways, pathways and trails; drainage systems; street lights and signage; and all utilities, including, but not limited to water, sewer, telephone, gas, and electricity, and utility meters; and for the purpose of installing any of the foregoing on property which the Declarant or the Association owns or within easements designated for such purposes on the Plat.

B. There is hereby reserved to the Declarant, so long as the Declarant owns any property described on Exhibit "A" or "B" of this Declaration, the non-exclusive right and power to grant such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of the PUD.

C. Any damage to a Unit resulting from the exercise of the easements described in Sections A and B of this Section shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of these easements shall

not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit; and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

D. Easements for installation and maintenance of utilities are reserved as shown on the plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities. A right of access to all such utilities is reserved to the Association and to all utility suppliers.

9.5 **Right of Entry.** The Association shall have the right, but not the obligation, to enter upon any Unit for emergency, security and safety reasons, to perform maintenance pursuant to this Declaration, and/or in good faith to inspect for the purpose of insuring compliance with this Declaration, the Articles and/or Bylaws. Such right may be exercised by any member of the Board, the Association's officers, agents, employees and managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Board, but shall not authorize entry into any single-family detached dwelling without permission of the Owner, except by emergency personnel acting in their official capacities.

ARTICLE X. GENERAL USE RESTRICTIONS

10.1 **Rules and Regulations.** The Association shall have authority to promulgate and enforce such reasonable rules, regulations and procedures as may be necessary or desirable to aid the Association in carrying out any of its functions or to insure that the Property is maintained and used in a manner consistent with the interest of the Owners.

10.2 **Use of Common Areas.** The Common Areas shall be used only in a manner consistent with their community nature and with the rules, regulations and use restrictions applicable to Units. By ways of example, but not limitation, the Board of Trustees may establish, create and enforce, in its sole discretion: rules or restrictions relative to the use of the parking stalls/areas within the Common Areas designated for non-exclusive use; and/or a means by which the courts or other recreational facilities in the Common Area may be equitably scheduled for use by the Members. No admission fees, charges for use, leases, or other income generating arrangement of any type shall be employed or entered into with respect to any portion of the Common Areas; provided, however, that vending machines and similar devices approved by the Board may be made available within the Common Areas.

10.3 **Use of Units.** Each Unit shall be used only for a single-family residence, according to then existing zoning and use guidelines. Residential structures shall be in the "Buildable Area". No Unit shall be used, occupied, or altered in violation of law, so as to create a nuisance or interfere with the rights of any Owners, or in any way which would result in an increase in the cost of any insurance covering the Common Areas or any other Unit.

10.4 Exception for Declarant. Notwithstanding the restrictions contained in this Article X, for the ten (10) year period following the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah, Declarant shall have the right to use any Unit owned by it, and any part of the Common Areas reasonably necessary or appropriate, in furtherance of any activities designed to accomplish or facilitate improvement and sale of all Units owned by Declarant. Declarant shall have the right to maintain one or more sales offices and model homes. Such offices and model homes may be located on any Unit(s) owned or leased by Declarant, or in one or more separate structures or facilities placed upon the Property for the purpose of aiding the Declarant's sales efforts, or any combination of the foregoing. Declarant shall also have the right to maintain a reasonable number of promotional, advertising, or directional signs, banners, or similar devices at any place or places on the Property. Declarant shall have the right from time to time to locate or relocate any of its sales offices, model homes, signs, banners or similar devices.

10.5 Leases. Any lease agreement between an Owner and a lessee respecting a Unit shall be subject in all respects to the provisions of this Declaration, the Articles and Bylaws, and any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All such lease agreements shall be in writing and provide for a minimum initial term of up to one (1) year. Other than the foregoing, there is no restriction on the right of any Owner to lease his Unit. An Owner shall be responsible and liable for any damage to the PUD caused by its tenant.

10.6 Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon the Property and no odors shall arise therefrom so as to render any part of the Property unsanitary or unsightly or which would be offensive or detrimental to any other part of the Property or to the occupants thereof. No noise or other nuisance shall be permitted to exist or operate upon any part of the Property so as to be offensive or detrimental to any other part of the Property, or to the occupants thereof. Without limiting the generality of any of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes) shall be located, used or placed on the Property without the prior written approval of the Board.

10.7 Temporary and Other Structures. No structures of a temporary nature, trailer, basement house, tent, shack, shed, garage, barn or other outbuildings shall be used at any time as a residence either temporarily or permanently, nor shall said structures be permitted on the Property at any time. No old or secondhand structures shall be moved onto any Unit, it being the intention hereof that all structures erected and maintained on Units or within the Property shall be new construction of good quality, workmanship and material.

10.8 Protection of Visual Aesthetics. The PUD has been designed to create and maintain an open feeling. Accordingly, the following provisions shall govern, together with such other, supplemental rules as may be adopted from time to time by the Association:

10.8.1 No chain-link fence or other fencing shall be constructed on any part of the Property except in a manner and area approved by the Board, and provided, further, that any such fencing shall provide for access for maintenance in a manner approved by the Board.

10.8.3 No unsightly articles shall be permitted to remain on any part of the Property so as to be visible from any other Unit or the Common Areas. Without limiting the generality of the foregoing, trailers, mobile homes, motor homes, recreational vehicles, trucks other than pickups, boats, tractors, vehicles other than automobiles, campers not on a truck, snowmobiles, snow removal equipment and garden or maintenance equipment shall be kept at all times, except when in actual use, in an enclosed structure or screened from view. It is specifically provided that the exclusive right to use Limited Common Areas shall not serve as a license to use such areas for purposes in contravention of the foregoing. (However, visitors to Members, who have small recreational vehicles, motor homes, trailers, etc., which fit in a regular parking stall may utilize the parking stall on a temporary basis, which shall mean not more than seven (7) days in any one-month period.) No outside storage shall be permitted, unless specifically approved by appropriate resolution of the Board of Trustees. No motorized vehicles of any type that are not in operating condition shall be allowed to be kept in the Units outside parking areas, including, without limitation, Limited Common Areas, for more than five (5) days. Furthermore, no vehicular repair shall be permitted in any outside parking areas, including Limited Common Areas. Refuse, garbage and trash shall be kept at all times in a covered, noiseless container and any such container shall be kept within an enclosed structure or appropriately screened from view. Service areas, storage piles, compost piles and facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from view. No lumber, grass, shrub or tree clippings or plant waste, metals, bulk materials or scrap or refuse or trash shall be kept, stored or allowed to accumulate on any Unit except within an enclosed structure or when appropriately screened from view.

10.9 **No further Subdividing.** No Unit or Common Areas may be further subdivided, nor may any easement or other interest therein less than the whole be conveyed by the Owner thereof without the prior written approval of the Association; provided, however, the nothing herein shall be deemed to prevent or require the approval of the Association for the transfer or sale of any Unit to more than one person to be held by them as tenants in common, joint tenants, or otherwise.

10.10 **Signs.** No sign of any kind shall be displayed to the public view without the approval of the Association, except such signs as may be used by Declarant in connection with the development of the PUD and the sale of Units and except such signs of customary and reasonable (small) dimensions as may be displayed from within a Unit advertising a Unit for sale or lease. Display of any "for sale" or "for lease" sign more than three (3) feet by two (2) feet shall require the prior written approval of the Association. A residential identification sign is permitted but should not exceed one (1) square foot in surface area. Numbers on residences shall be located in a position clearly legible from the street, but not more than six (6) feet above main floor level. Personal signs or expressions, such as (but not limited to) exterior decorative flags, religious signs and political signs may not be displayed unless permitted by, and in that event only in a manner which is consistent with, a policy adopted by the Board of Trustees.

10.11 **No Hazardous Activities.** No activities shall be conducted on the Property and no improvements constructed on the Property, which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon the Property and no open fires nor incinerators shall be lighted or permitted on

the Property except in a contained barbecue unit while attended and in use for cooking purposes or within a safe and well-designed interior fireplace.

10.12 Improvements and Alterations. There shall be no excavation, construction or alteration (including a material alteration of color) which in any way alters the exterior appearance of any improvement within the Property nor removal of any improvement within the Property (other than repairs or rebuilding) without the prior written approval of the Association. All structures shall comply with approved plans, and shall, at all times, be maintained in good condition and repair. The Master Plan provides for cohesively designed residential structures, within the PUD. Accordingly, each of the residential structures shall be approved by the Board of Trustees of the Association, and must conform with the Master Plan, including the associated Plans and Profiles, utilizing one of the approved plans. It is expressly acknowledged that the Master Plan and its associated documents may be amended, from time to time, by the Declarant, by its unilateral act, to add new plans or make changes to existing plans, subject to municipal approvals, if necessary. [It is acknowledged that, due to the relatively high water table which may exist on the land which is the subject of the Declaration, developers or Owners should consult applicable soils reports before constructing basements or below grade improvements to any structure on the Property.]

10.13 Rooftop Antennas. No television, ham radio, citizens band or radio antenna, satellite receiving or other similar electronic receiving or sending device shall be permitted upon the rooftop or side of any unit or elsewhere if exposed to view from any other Unit. Such antennas, if used, must be of the types that are installed within the natural building structure. In no case will any such receiving or sending antenna or other device be allowed to interfere with the peace and quiet enjoyment of any neighboring Unit Owner's premises or home entertainment facilities or equipment. Provided, however, Declarant and the Association reserve the right and option to install cable service lines and antennas as needed throughout the PUD in connection with its development.

10.14 Architectural Control. All structures shall be constructed in accordance with the types and architectural style described on the Master Plan. No building, fence, wall or other structure shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein be made unless and until the plans and specifications showing the color, nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing by the Board.

10.15 General Obligations. Each Owner shall enjoy and be subject to all rights and duties assigned to Owners pursuant to this Declaration. With respect to unsold Units, the Declarant shall enjoy the same rights and assumes the same duties with respect to each unsold Unit.

ARTICLE XI. MORTGAGEE PROTECTION

11.1 Notice of Action. Upon written request made to the Association by a First Mortgagee, or an insurer or governmental guarantor of a First Mortgage, which written request shall identify the name and address of such First Mortgagee, insurer or governmental guarantor and Unit number or address, any such First Mortgagee, insurer or governmental guarantor shall be entitled to timely written notice of:

A. Any condemnation loss or any casualty loss which affects a material portion of the Unit on which there is a First Mortgage held, insured or guaranteed by such First Mortgagee, insurer or governmental guarantor;

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

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

D. Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified in Section 2 below or elsewhere herein.

11.2 Matters Requiring Prior Eligible Mortgagee Approval. Except as provided elsewhere in this Declaration, the prior written consent of Owners entitled to vote at least sixty-seven percent (67%) of the votes of the Units in the Association (unless pursuant to a specific provision of this Declaration the consent of Owners entitled to vote a greater percentage of the votes in the Association is required, in which case such specific provisions shall control), and Eligible Mortgagees holding First Mortgages on Units having at least fifty-one percent (51%) of the votes of the Units subject to First Mortgages held by Eligible Mortgagees shall be required to:

A. Abandon or terminate the Declaration.

B. Add or amend any material provision of the Declaration, Articles, Bylaws or Plat, which establishes, provides for, governs or regulates any of the following (an addition or amendment to such documents shall not be considered material if it is for the purpose of correcting technical errors or for clarification only):

(i) voting rights;

(ii) changes in the priority of assessment liens which changes negatively affect the rights of Mortgagees;

(iii) reallocation of interests in the Common Areas, or rights to their use;

(iv) hazard or fidelity insurance requirements;

(v) imposition of any restrictions on Owner's right to sell or transfer his or her Unit;

(vi) any provisions that expressly benefit Mortgagees, insurers, or guarantors.

Any Mortgagee, insurer or governmental guarantor who receives a written request from the Association to approve additions or amendments to the constituent documents and who fails to

deliver or post to the Association a negative response within thirty (30) days shall be deemed to have approved such request, provided the written request was delivered by certified or registered mail, with a "return receipt" requested.

11.3 Availability of PUD Documents and Financial Statements. The Association shall be required to make available to Owners, lenders and the holders, insurers, and guarantors of the First Mortgages on any unit, current copies of the Declaration, Articles, Bylaws, and other rules governing the PUD, and other books, records, and financial statements of the Association. The Association also shall be required to make available to prospective purchasers current copies of the Declaration, Bylaws, other rules governing the PUD, and the most recent financial statement, if such is prepared. These documents shall be available for inspection, upon written request, during normal business hours or under other reasonable circumstances.

11.4 Subordination of Lien. The lien or claim against a Unit for unpaid assessments or charges levied by the Association pursuant to this Declaration shall be subordinate to the First Mortgage affecting such Unit if the First Mortgage was recorded before the delinquent assessment was due, and the First Mortgagee thereunder which comes into possession of or which obtains title to the Unit shall take the same free of such lien or claim for unpaid assessment or charges, but only to the extent of assessments or charges which accrue prior to foreclosure of the First Mortgage, exercise of a power of sale available thereunder, or taking of a deed or assignment in lieu of foreclosure. No assessment, charge, lien, or claim which is described in the preceding sentence as being subordinate to a First Mortgage or as not to burden a First Mortgagee which comes into possession or which obtains title shall be collected or enforced by the Association from or against a First Mortgagee, a successor in title to a first Mortgagee, or the Unit affected or previously affected by the First Mortgage concerned.

11.5 Payment of Taxes. In the event any taxes or other charges which may or have become a lien on the Common Areas are not timely paid, or in the event the required hazard insurance described in 6.5A lapses, is not maintained, or the premiums therefor are not paid when due, any Mortgagee or any combination of Mortgagees may jointly or singly, pay such taxes or premiums or secure insurance. Any Mortgagee which expends funds for any of such purposes shall be entitled to immediate reimbursement therefor from the Association.

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

ARTICLE XII. ANNEXATION OR WITHDRAWAL OF PROPERTY

12.1 Annexation Without Approval of Membership. Until all property described on Exhibit "B" has been subjected to this Declaration, or the date which is ten (10) years after the recording of this Declaration, whichever is earlier, Declarant may, from time to time, unilaterally subject to the provisions of this Declaration all or any portion of the real property described on Exhibit "B". *The Declarant may transfer or assign this right to annex property, provided that the transferee or assignee is the developer of at least a portion of the real property described in Exhibit "B", and that such transfer is memorialized in a written, recorded instrument executed by Declarant.* Such annexation shall be accomplished by filing a Supplemental Declaration with the Salt Lake County Recorder describing the property being annexed. Such Supplemental

Declaration shall not require the consent of Members, but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein. (Nothing in this Declaration shall be construed to require the Declarant or any successor to annex or develop any of the property described in Exhibit "B" in any particular manner whatsoever, unless annexed according to the foregoing.)

12.2 Annexation With Approval of Membership. The Association may annex any real property to the provisions of this Declaration with the consent of the owner of such property, the affirmative vote of members representing a majority of the Class A votes of the Association represented at a meeting duly called for such purpose, and the consent of the Declarant so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with Section 12.1. Such annexation shall be accomplished by filing a Supplemental Declaration describing the property being annexed, with the Salt Lake County Recorder. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the annexed property, and by the Declarant, if the Declarant's consent is required. Any such annexation shall be effective upon filing unless otherwise provided therein.

12.3 Withdrawal of Property. The Declarant reserves the right to amend this Declaration so long as it has a right to annex additional property pursuant to Section 12.1, for the purpose of removing any portion of the Property from the coverage of this Declaration, provided that such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Property, and does not reduce the total number of Units then subject to this Declaration by more than ten (10%) percent. Such amendment shall not require the consent of any Person other than the Owner of the property to be withdrawn, if not the Declarant.

12.4 Restriction on Amendment of Article XII. This Article XII shall not be amended without the prior written consent of Declarant, so long as the Declarant owns any property described in Exhibits "A" or "B".

12.5 Standards and Conditions. In the event of an annexation, the additional phase(s) shall be subjected to the provisions of this Declaration. All future improvements to the PUD shall be consistent with the initial improvements in terms of quality of construction. No expansion shall affect the validity of the PUD nor shall it affect the validity of the title to the Units.

12.6 Reallocation. In the event of expansion of the PUD involving an increase in the number of Units in the PUD, the voting rights of the Members of the Association, and the ownership interests pursuant to Article IV and the obligation for common expense liabilities pursuant to Article V of this Declaration shall each be accordingly reallocated to take into account, from the time of expansion forward, the increased number of Units and their relationship with the other Units in the PUD. In the event of expansion in accordance with the foregoing, the PUD shall have a specified maximum number of Units and shall provide that each Owner shall have a minimum percentage of interest in the Common Area, and shall also provide for a specified minimum number of Units which will give each Owner a maximum percentage of interest in the Common Area. Accordingly, for example, the minimum number of Units shall be the number of Units in Phase One, which is eight (8) Units. Upon addition of Phase Two, the total number of Units shall be increased to fourteen (14). The obligation for common expense

liabilities shall be allocated according to a fraction for each unit, where the numerator of such fraction is one, and the denominator of such fraction is the total number of Units. Therefore, when Phases One and Two are combined, the allocation of expenses shall be one-fourteenth (1/14) for each Unit. The foregoing are provided as examples, and not in limitation of the numbers of Units which may be made part of the PUD including the potential for Phase III located to the west of Phase I that consists of six additional Units.

ARTICLE XIII. MISCELLANEOUS

13.1 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 mailed postage prepaid to the person who appears as an Owner, at the latest address for such person, appearing in the records of the Association at the time of mailing.

13.2 Amendment of Declaration. Except as provided elsewhere in this Declaration, any amendment to this Declaration shall require the affirmative vote or written approval of at least sixty-seven percent (67%) of the total votes of the Association. Any amendment authorized pursuant to this Section shall be accomplished through the recordation in the office of the Salt Lake County Recorder of an instrument executed by the Association. In such instrument an officer or Trustee of the Association shall certify that the vote required by this Section for amendment has occurred. Anything in this Article or Declaration to the contrary notwithstanding, Declarant reserves the right to amend all or any part of this Declaration to such extent and with such language as may be requested by FNMA or the VA or any other federal, state or local governmental agency with jurisdiction over the subject matter which requests such an amendment as a condition precedent to such agency's approval of the Declaration, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Unit(s) or any portions thereof. Upon approval by the VA or by any other federal, state or local government agencies (the approval of which is required by applicable law), any such amendment shall be effected by the recordation by Declarant of an amendment duly signed by or on behalf of the authorized officers of Declarant with their signatures acknowledged, specifying the federal, state or local governmental agency or the federally chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. Recordation of such an amendment shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such amendment, when recorded, shall be binding upon all of the PUD and all persons having an interest therein. It is the desire of Declarant to retain control of the Association and its activities during the anticipated period of planning and development. If any amendment requested pursuant to the provisions of this Section deletes, diminishes or alters such control, Declarant alone shall have the right to amend this Declaration, and so long as the Declarant is the Owner of any unit in the PUD, this Declaration may be amended or terminated only with the written approval of the Declarant. The Declarant alone may amend or terminate this Declaration prior to the closing of a sale of any Unit.

13.3 Rights of Action. The Association and any aggrieved Owner shall have a right of action against Owners who fail to comply with the provisions of the Declaration or the decisions of the Association. Owners shall have a similar right of action against the Association.

13.4 **Declarant's Rights Assignable.** The rights of Declarant under this Declaration or in any way relating to the Property may be assigned, whereupon the assignee of Declarant shall have all the rights of Declarant hereunder.

13.5 **Interpretation.** The captions which precede the Articles and Sections of this Declaration are for convenience only and 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, the whole shall include any part thereof, and any gender shall include both other genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder thereof. This Declaration shall be liberally construed to effect all of its purposes.

13.6 **Covenants to Run With Land.** This Declaration and all of 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 Unit or in the Common Areas, and their respective grantees, transferees, heirs, devisees, personal representatives, successors and assigns. Each Owner or occupant of a Unit shall comply with, and all interest in all Units or in the Common Areas shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments and determinations contemplated by this Declaration. By acquiring any interest in a Unit or in the Common Areas, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

13.7 **Lists of Owners and Eligible Mortgagees.** The Board may maintain up-to-date records showing: (i) the name of each person who is an Owner, the address of such person, and the Unit which is owned by him; (ii) the name of each person or entity who is an Eligible Mortgagee, the address of such person or entity and the Unit which is encumbered by the Mortgage held by such person or entity; and (iii) the name of each person or entity who is an insurer or governmental guarantor, the address of such person or entity, and the Unit which is encumbered by the Mortgage insured or guaranteed by such person or entity. In the event of any transfer of a fee or undivided fee interest in a Unit, either the transferor or transferee shall furnish the Board with evidence establishing that the transfer has occurred and that the Deed or other instrument accomplishing the transfer is of record in the office of the County Recorder of Salt Lake County, Utah. The Board may for all purposes act and rely on the information concerning Owners and Unit ownership which is thus acquired by it or, at its option, the Board may act and rely on current ownership information respecting any Unit or Units which is obtained from the office of the County Recorder of Salt Lake County, Utah. The address of an Owner shall be deemed to be the address of the Unit owned by such person unless the Board is otherwise advised.

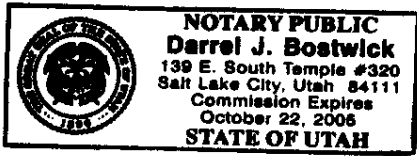
13.8 **Effective Date.** This Declaration and any amendment or supplement hereto shall take effect upon its being filed for record in the office of the County Recorder of Salt Lake County, Utah.

DECLARANT: Len Pickens Construction Incorporated, a Utah Company

By: 
Len Pickens, Its President

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

On this 21st day of March, 2005, personally appeared before me Len Pickens, the signer of the above instrument, who duly acknowledged to me that he is authorized by Len Pickens Construction, Incorporated, to execute the same for and on behalf of the said corporation, a Utah Company, the Declarant, and that Len Pickens executed the foregoing document pursuant to its authority.



Darrel J. Bostwick
NOTARY PUBLIC