

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
AND RESERVATION OF EASEMENT
FOR
THANKSGIVING VILLAGE
A Planned Unit Development

THIS DECLARATION is made this _____ day of _____,
2003 by the Declarant as follows:

RECITALS

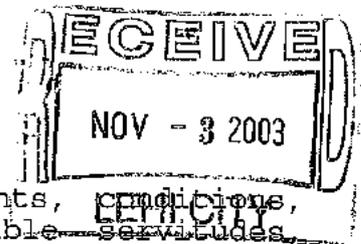
WHEREAS, THANKSGIVING VILLAGE, L.C. (hereinafter referred to as "Declarant"), is the owner of certain real property (the "Property") located in Utah County, State of Utah as more particularly described in that certain plat map containing one hundred forty-three (143) lots entitled Village at Thanksgiving Point, a Planned Unit Development, recorded in the official records of the office of the County Recorder of Utah County, State of Utah as Entry _____ on _____, 2003; and

WHEREAS, the Declarant is desirous of subjecting all of the Property to all of the covenants, conditions, restrictions, reservation of easements, liens and charges hereinafter provided for, each and all of which is and are for the benefit of and shall pass with the Property, and each and every parcel or Lot thereof, and shall apply to and bind the successors in interest, and any Owner thereof; and

WHEREAS, the Declarant has deemed it desirable, for the efficient preservation of the values and amenities in the Property and any other real property which may be annexed hereto pursuant to the provisions of this Declaration, to create a corporation under Utah Non-Profit Corporation and Co-operative Association Act (Refer to Article I Section 7) to which should be delegated and assigned the powers of owning, maintaining and administering the common areas, private roadways and certain other improvements in the Property and administering and enforcing these covenants, conditions and restrictions, and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, the Declarant has caused such corporation, the members of which are or shall be the respective Owners of the Lots in the Property, and Owners of the Lots in any real property annexed pursuant to this Declaration, to be formed for the purpose of exercising the functions aforesaid; and

WHEREAS, the Declarant will develop and convey all of the Property pursuant to a general plan for all of the Property



and subject to those certain protective covenants, ~~conditions,~~ restrictions, reservation of easements, equitable ~~servitudes,~~ liens and charges, all running with the Property as hereinafter set forth: and

WHEREAS, the Declarant may execute, acknowledge, and record a Supplemental Declaration affecting only a "Phase" (as such term is hereinafter defined) so long as the Declarant owns all the real property to be affected by such Supplemental Declaration; and

WHEREAS, said Supplemental Declaration shall not conflict with the provisions of this Declaration, but may impose further conditions, covenants and restrictions for the operation, protection and maintenance of the Property; and

WHEREAS, the Declarant hereby declares that all of the Property shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following covenants, conditions, restrictions, easements and equitable servitudes, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of the Property, in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Property, or any portion thereof; and

WHEREAS, notwithstanding any of the foregoing recitals, no provisions of this Declaration shall be construed as to prevent or limit the Declarant's right to complete development of the Property and construction of improvements thereon, nor the Declarant's rights to maintain model homes, construction, sales or leasing offices, or similar facilities on any portion of the Property owned by the Declarant or the Association, nor Declarant's right to post signs incidental to such construction, sales or leasing.

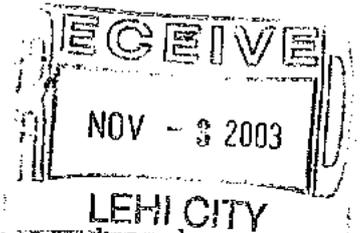
ARTICLE I

Definition

Unless otherwise expressly provided, the following words and phrases when used herein shall have the meanings hereinafter specified:

Section 1. "Architectural Committee" shall mean the committee created pursuant to Article VIII hereof.

Section 2. "Articles" shall mean the Articles of Incorporation of the Association which have been or forthwith shall be filed in the Division of Corporations of the Department of Commerce of the State of Utah, as such Articles may be amended



from time to time.

Section 3. "Common Assessment" shall mean ~~the charge~~ against each Owner and his Lot, representing a portion of the total costs to the Association for maintaining, improving, repairing, replacing, managing and operating the Property (other than costs associated with providing services covered by the Optional Assessment, if any), which charge is to be paid uniformly and equally by each Owner to the Association, as provided herein.

Section 4. "Special Assessments" shall mean a charge against a particular Owner and his Lot, directly attributable to the Owner, equal to the cost incurred by the Association for corrective action performed pursuant to the provisions of this Declaration, plus interest thereon as provided for in this Declaration.

Section 5. "Reconstruction Assessment" shall mean a charge against each Owner and his Lot, representing a portion of the cost to the Association for reconstruction of any portion or portions of the improvements on the Common Area pursuant to the provisions of this Declaration.

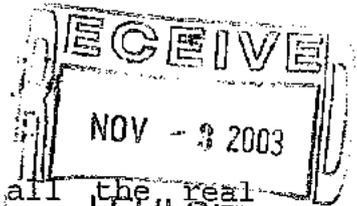
Section 6. "Capital Improvement Assessment" shall mean a charge against each Owner and his Lot, representing a portion of the costs to the Association for the installation or construction of any improvements which the Association may from time to time authorize on any portion of the Common Area or on any portion of the Lots or improvements thereon which the Association has the responsibility to maintain.

Section 7. "Association" shall mean Thanksgiving Village Property Owners Association, a corporation formed under the Utah Non-Profit Corporation and Co-operative Association Act, its successors and assigns.

Section 8. "Beneficiary" shall mean a mortgagee under a mortgage or a beneficiary under a deed of trust, as the case may be, and the assignees of such mortgage or beneficiary.

Section 9. "Board" shall mean the Governing Board of the Association, the members of which shall be elected in accordance with the By-Laws of the Association. The term "Members of the Governing Board" shall be synonymous with the term "Directors" as used in the Utah Non-Profit Corporation and Co-operative Association Act.

Section 10. "By-Laws" shall mean the By-laws of the Association, which have been or shall be adopted by the Board, as such By-laws may be amended from time to time.



Section 11. "Common Area" shall mean all the real property and improvements, including without limitation any recreation facilities, landscaped areas, private roadways and walkways, and visitor parking, which are owned by the Association for the common use and enjoyment of all the Owners. The Common Area to be so owned by the Association at the time of the conveyance of the first Lot shall also include the property described as Common Area on the Thanksgiving Village Plat Map. Additional Common Area may be transferred to the Association in the future pursuant to the terms of Article XIV. The Common Area located within any future subdivision or portion thereof, shall be conveyed, lien free, to the Association prior to the sale of the first Lot within any future subdivision, or portion thereof, to the public.

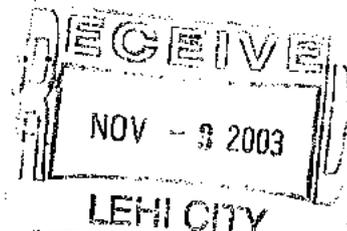
Section 12. "Common Expenses" shall mean the actual and estimated costs of maintenance, management, operation, repair and replacement of the Common Area (including unpaid Special Assessments, Reconstruction Assessments and Capital Improvement Assessments), including those costs not paid by the Owner responsible for payment; costs of management and administration of the Association including, but not limited to, attorneys and other employees and consultants; the costs of all utilities, landscaping and other services benefiting the Common Area, and all recreational facilities thereon; the costs of fire, casualty and liability insurance covering the Property or portions thereof; and the cost of bonding of the Directors of the Association; taxes paid by the Association; amounts paid by the Association for discharge of any lien or encumbrance levied against the Property, or portions thereof; and the cost of any other item or items designed by, or incurred by, the Association for any reason whatsoever in connection with the Property, for the benefit of all of the Owners.

Section 13. "Declarant" shall mean and refer to Thanksgiving Village, L.C, a Utah limited liability company consisting of Village Communities L.C., McArthur Homes, Inc., and Gold Medallian Custom Homes, LLC, and the successors and assigns of the said limited liability company or its individual members, so long as the said limited liability company and/or its individual members assign such rights of Declarant hereunder to any such successor and assignee by an express written assignment.

Section 14. "Declaration" shall mean this instrument as it may be amended from time to time.

Section 15. "Deed of Trust" shall mean and refer to a mortgage or a deed of trust, as the case may be.

Section 16. "Dwelling Unit" shall mean and refer to a "Single Family Detached House" as that term is defined herein,



located on a Lot designed and intended for use and occupancy as a residence by a single family.

Section 17. "Family" shall mean (1) a group of natural persons related to each other by blood or legally related to each other by marriage or adoption, or (2) a group of not more than three (3) persons not so related, inclusive of their domestic servants, who maintain a common household in a residence on a Lot.

Section 18. "Improvement" shall mean all structures and appurtenances thereto of every type and kind, (and any alteration or addition thereto), including but not limited to buildings, out buildings, walkways, sidewalks, sprinkler pipes, garages, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, protective screens and awnings required by governmental entities, stairs, decks, landscaping, hedges, windbreaks, planting trees and shrubs, poles, or signs.

Section 19. "Property" shall mean and refer to all of the real property described in the aforesaid Thanksgiving Village Plat Map including perpetual easements, together with such portion of the real property described in any additional exhibit to be attached thereto with respect to which a Notice of Addition of Property has been recorded subjecting it to this Declaration and to the jurisdiction of the Association as provided herein.

Section 20. "Maintenance Funds" shall mean the accounts created for receipts and disbursements of the Association, pursuant to Article VI hereof.

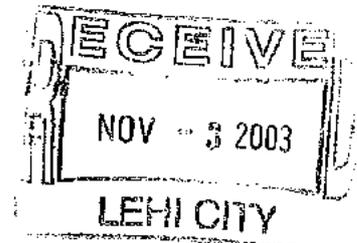
Section 21. "Lot" shall mean and refer to any residential Lot or parcel of land shown upon any recorded subdivision plat of the Property, with the exception of the Common Area.

Section 22. "Manager" shall mean the person, firm, corporation or its agents retained or employed by the Association hereunder and delegated certain duties, powers and functions by the Association.

Section 23. "Member" shall mean any person or entity holding a membership in the Association as provided herein.

Section 24. "Mortgage" shall mean any mortgage or Deed of Trust or other conveyance of a Lot to secure the performance of an obligation, which will be void and reconveyed upon the completion of such performance. The term "Deed of Trust" or "Trust Deed" when used herein shall be synonymous with the term "Mortgage".

Section 25. "Mortgagee" shall mean a person or entity



to whom a Mortgage is made and shall include the Beneficiary of a Deed of Trust.

Section 26. "Mortgagor" shall mean a person or entity who mortgages his or its property to another (i.e., the maker of a Mortgage), and shall include the trustor of a Deed of Trust. The term Mortgagor shall be synonymous with the term "Trustor".

Section 27. "First Mortgagee" shall mean any lender which holds a Mortgage or Trust Deed which constitutes a first and prior lien vis and vis any other Mortgage or Trust Deed on the same real property. The term First Mortgagee will also include any beneficiary named in any such first and prior Trust Deed.

Section 28. "Notice of Hearing" shall mean written notice of a hearing before a quorum of the Board, at which the Owner concerned shall have an opportunity to be heard in person or by counsel at the Owner's expense.

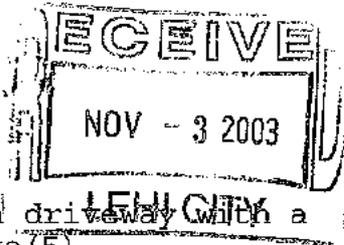
Section 29. "Owner" shall mean and refer to the person or persons or other legal entity or entities, including Declarant, holding fee simple interest of record to any Lot which is a part of the Property, including buyers under executory contracts of sale, but excluding those having such interest merely as security for the performance of an obligation. For purposes of Article X only, unless the context otherwise requires, Owner shall also include the family, invitees, licensees and lessees of any Owner.

Section 30. "Person" shall mean a natural individual or any other entity with the legal right to hold title to real property.

Section 31. "Record, Recorded, Filed and Recordation" shall mean, with respect to any document, the recordation of such document in the Office of the Utah County Recorder, State of Utah.

Section 32. "Phase" shall mean a parcel of real property which has been divided or separated into Lots, shown on a recorded subdivision map.

Section 33. "Single Family Detached House" shall mean a building: (1) which is located on a privately owned Lot, (2) which is not attached to another building, (3) which is used as a dwelling for a single family, (4) which has a private yard on all four sides with the following minimums: front yard from lot line to front of front porch - 12 feet; rear yard from lot line to rear of home or elevated deck - 15 feet; side yards - 5 feet and 5 feet (excluding encroachments for cantilevered fireplaces and/or cantilevered bay windows on one side only); minimum distance between houses 10 feet (with all measurements taken from the foundation wall), (5) which has a two-car garage measuring a



minimum of 20 feet by 20 feet, and (6) which has a driveway with a minimum of 18 feet from lot line to front of garage(5).

Section 34. "Supplemental Declaration" shall mean any declaration of covenants, conditions and restrictions which may be recorded by Declarant pursuant to Article XIV of this Declaration.

Section 35. "Transfer Assessment" shall mean a charge against a particular new Owner, and his Lot, to cover the cost to the Association of effectuating a transfer of membership upon the books of the Association and to perpetuate the Reserve Fund of the Association, in charge shall be in an amount as set forth in Section 2 of Article III of this Declaration.

Section 36. "Optional Assessments" shall mean a charge against certain Owners and their Lots, to reflect the fact that the said Lots and improvements thereon are receiving services substantially different than typical Lots, which Optional Assessments may be assessed at the discretion of the Association.

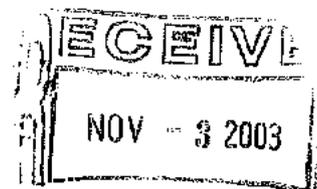
The foregoing definitions shall be applicable to this Declaration and also to any Notice of Addition of Property, Supplemental Declaration or Declaration of Amendment, unless otherwise expressly provided, recorded pursuant to the provisions of this Declaration.

ARTICLE II

Owner's Property Rights

Section 1. Owner's Easements of Enjoyment. Each Owner shall have a right and easement of ingress and egress and of enjoyment in, to and over the Common Area which shall be appurtenant to and shall pass with title to every Lot, subject to the following provisions:

- (a) The right of Declarant to annex additional Common area thereto pursuant to the terms of Articles XIV.
- (b) The right of the Association to reasonably limit the number of guests of Owners using the Common Area facilities and the frequency thereof.
- (c) The right of the Association to establish uniform rules and regulations pertaining to the use of the Common Area and the recreational facilities thereof, including, but not limited to, the right and obligation of the Association to enforce all parking restrictions within the Common Area as set forth in Section 3 of this Article II.



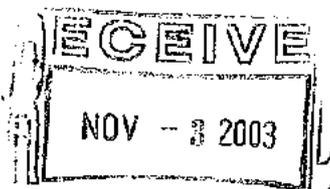
(d) The right of the Association to charge uniform and reasonable admission and other fees for the use of the recreational facilities, if any, situated upon a portion of the Common area; provided, however, that none of the Common Area facilities, recreational facilities, parking spaces or other amenities in the Property shall be leased to the Owners or any other parties on a long-term basis.

(e) The right of the Association in accordance with its Articles of Incorporation, by-laws and this Declaration, with the vote of or written assent of two-thirds (2/3) of its members (excluding therefrom the voting power of Declarant), to borrow money for the purpose of improving the Common Area and facilities and in aid thereof, and subject to the provisions of Articles XIII of this Declaration, to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, provided that the rights of any Mortgagee shall be subordinated to the rights of the Owners.

(f) Except for the right of ingress and egress to an Owner's Lot, the Association shall have the right to suspend the voting rights and right to use the Common Area facilities by an Owner for any period during which any assessment against his Lot remains unpaid and delinquent; and for a period not to exceed thirty (30) days for any single infraction of the published rules and regulations of the Association, provided that any suspension of such voting rights or the right to use of the Common Area and Common Area facilities, shall be made only by the Board, after Notice of Hearing, and an opportunity for a hearing before a quorum of the Board.

(g) Subject to the provisions of Article XIII of this Declaration, the right of the Association to dedicate, release, alienate or transfer all or any part of the Common area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication, release, alienation or transfer shall be effective, unless pursuant to an instrument signed by two-thirds (2/3) of the Class A Members of the Association.

(h) The right of the Declarant (and its sales agents, customers and representatives) to the nonexclusive use of the Common Area and the facilities thereof, without charge, for sales, display, access, ingress, egress and exhibit purposes, which right the Declarant hereby reserves; provided, however, that such use shall not be



for a period of more than ten (10) years after the date of recording this Declaration. Upon the request of the Declarant and upon the vote of fifty-one percent (51%) of the Class A Members of the Association, this term may be extended for an additional period of time.

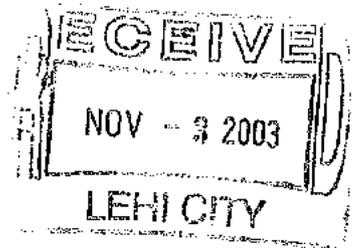
(i) The right of the Association (by action of the Board) to reconstruct, replace or refinish any Improvement or portion thereof upon the Common Area, in accordance with the original design, finish or standard of construction of such Improvement, or of the general improvements within the Property, as the case may be; and not in accordance with such original design, finish or standard of construction only with the vote or written consent of seventy-five percent (75%) of the Class A Members of the Association.

(j) The right of the Association to replace destroyed trees, shrubs and ground cover upon any portion of the Property.

Section 2. Assignment of Use. Any Owner may assign, in accordance with the By-laws, his right of enjoyment to the Common area and facilities to the members of his family, his tenants, or contract purchasers who reside in his Dwelling Unit, subject to reasonable regulation by the Board.

Section 3. Easements for Parking. Temporary guest parking shall be permitted within the Common Area only within spaces and areas clearly marked for this purpose. Spaces shall be shown by signs or markings on the paved area. The Association, through its officers, committees and agents, is hereby empowered to establish "parking," and "no parking" areas within the Common area, as well as to enforce such parking limitations by all means lawful for such enforcement, including the removal of any violating vehicle by those empowered. Provided, however, no curbside parking shall be allowed within fifteen (15) feet of a fire hydrant and the portion of the curb within such restricted area shall be marked as a no-parking zone in red paint. Also provided that curbside parking areas in front of Lot 93 shall be designated as "no parking" areas.

Section 4. Easements for Vehicular Traffic. In addition to the general easements or use of the Common Area reserved herein, there shall be and the Declarant hereby reserves and covenants for itself and all future Owners within the Property, that each and every Owner shall have a non-exclusive easement appurtenant for vehicular traffic over all private roads within the Property, subject to the parking provisions set forth in Section 3 of this Article II. The Declarant reserves the right to grant similar easements to Owners of property in subdivisions



annexed hereto pursuant to Article XIV.

Section 5. Easements for City and County Public Service Use, Etc. In addition to the foregoing easements over and across the property reserved herein, the Declarant reserves and covenants for itself and all future Owners within the Property, easements for city, county and federal public services, including, but not limited to, the right of the police to enter upon any part of the Common area for the purpose of enforcing the law. Also, the Declarant reserves and covenants for itself and all future Owners within the Property, easements for public utilities and easements for storm drain connections and sewer line connections for adjoining landowners.

Section 6. Waiver of Use. No Owner may exempt himself from personal liability for assessments duly levied by the Association, nor release the Lot or other property owned by him, from the liens and charges thereof, by waiver of the use and enjoyment of the Common Area and the facilities thereon, or by abandonment of his Lot or any other property in the Property.

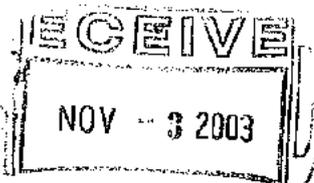
Section 7. Taxes. Each Owner shall execute such instrument and take such action as may reasonably be specified by the Association to obtain a separate real estate tax assessment of each Lot. If any taxes or assessments may, in the opinion of the Association, nevertheless be a lien on more than one Lot not under common ownership, or any part thereof, they may be paid by the Association and each Owner shall be obligated to pay or to reimburse the Association for, as the case may be, the taxes and assessments assessed by the County Assessor or other taxing authority against his own Lot and interest, if any, in the Common Area.

ARTICLE III

Membership in Association

Section 1. Membership. Every Owner of a Lot shall be a Member of the Association. Membership in the Association shall not be assignable, except to the successor-in-interest of the Owner, and every Membership in the Association shall be appurtenant to and may not be separated from the fee simple title of such Lot. Ownership of such Lot shall be the sole qualification for Membership in the Association.

Section 2. Transfer. The Association Membership held by any Owner of a Lot shall not be transferred, pledged or alienated in any way, except upon the sale or encumbrance of such Lot, and then only to the purchaser or Mortgagee of such Lot. Any attempt to make a prohibited transfer is void, and will not be reflected upon the books and records of the Association. A Class



A Member who has sold his Lot to a contract purchaser under an agreement to purchase such Membership, shall be entitled to assign to such contract purchaser his right of enjoyment of the Common area and facilities as provided in Article II, Section 2, and such Member's voting proxy rights in the Association, but as between the Association and such Member, the Member may not delegate his Membership obligations. Such assignment and/or proxy shall be in writing and shall be delivered to the Board before such contract purchaser may use the Common area and facilities or vote, as the case may be. The contract seller shall remain liable for all charges and assessments attributable in his Lot until fee simple title to the Lot sold is conveyed. In the event the Owner of any Lot shall fail or refuse to transfer the Membership registered in his name to the purchaser of such Lot upon transfer of fee simple title thereto, the Board shall have the right to record the transfer upon the books of the Association. Upon any transfer, pledge, or alienation of a Lot, the Board shall have the right to charge a Transfer Assessment against any new Owner, and his Lot, equal in amount to three (3) times the current monthly Common Assessment, but not less than Three Hundred Dollars (\$300.00) to cover the cost to the Association of effectuating any such transfer of Membership upon the books of the Association and to perpetuate the reserve funds of the Association.

ARTICLE IV

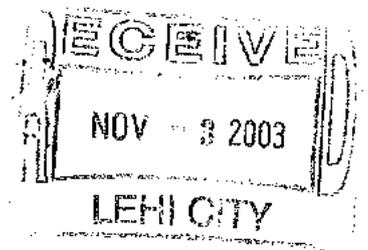
Voting Rights

Section 1. Classes of Voting Membership. The Association shall have two (2) classes of voting Membership as follows:

Class A. Class A Members shall originally be all Owners, with the exception of the Declarant, for so long as there exists a Class B Membership. Class A Members shall be entitled to one (1) vote for each Lot owned. The Declarant shall become a Class A Member with regard to Lots owned by the Declarant upon conversion of Declarant's Class B Memberships as provided below. When more than one person holds an interest in any Lot, all such persons shall be Members.

The vote for such Lot shall be exercised in accordance with Article IV, Section 2 of this Declaration, and in no event shall more than one (1) vote be cast with respect to any Lot owned by Class A Members.

Class B. The Class B Member shall be the Declarant and it shall be entitled to a total of three (3) votes for each Lot owned by the Declarant. The Class B Membership shall cease and be converted to Class A Membership on the happening of any of the following



events, whichever occurs earliest:

(a) When the total votes outstanding in the Class A Memberships, inclusive of votes attributable to any property annexed to the Property, equals the total votes outstanding in the Class B Memberships;

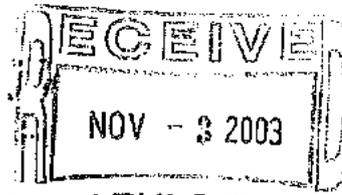
(b) Ten (10) years from the date of recording this Declaration; or

(c) On voluntary cancellation of Class B Membership by the Declarant.

Section 2. Vote Distribution. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for Membership. The Class B Member shall be entitled to three (3) votes for each Lot in which it holds an interest required for that Membership. When more than one person holds such interest or interest in any Lot, (a "co-owner"), all such co-owners shall be Members and may attend any meetings of the Association, but only one such co-owner shall be entitled to exercise the vote (or votes in the case of the Class B Member) to which the Lot is entitled. Such co-owners may from time to time designate in writing one of their number to vote. Fractional votes shall not be allowed, and the Class A Member's and Class B Member's vote (or votes in the case of the Class B Member) for each Lot shall be exercised, if at all, as a unit. When no voting co-owner is designated or if such designation has been revoked, the vote for such Lot shall be exercised as the majority of the co-owners of the Lot mutually agree. Unless the Board receives a written objection from a co-owner, it shall be presumed that the corresponding voting co-owner is acting with the consent of his or her co-owners. No vote shall be cast for any Lot where the majority of the co-owners present in person or by proxy and representing such Lot cannot agree to said vote or other action. The non-voting co-owner or co-owners shall be jointly and severally responsible for all of the obligations imposed upon the jointly owned Lot and shall be entitled to all other benefits of ownership. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established herein, or by the By-laws of the Association, shall be deemed to be binding on all Owners, their successors and assigns. Said voting rights shall be subject to the restrictions and limitations provided in this Declaration and in the Articles of Incorporation and By-laws of the Association.

ARTICLE V

Duties and Powers of Association



The Association, acting through the Board, shall have the power and duty to:

(a) Maintain, repair and otherwise manage the Common Area and all facilities and improvements, and replace those elements of the Common Area that must be replaced on a periodic basis, including but not limited to the improvements and landscaping thereon, in accordance with the provisions of Article VI of this Declaration.

(b) Maintain all private roads within the Common Area, all sidewalks within the Common Area, all parking areas within the Common Area, and all roads and greenscape areas located on easements, including cleaning, snow removal, sign maintenance, landscape maintenance and periodic resurfacing;

(c) Grant easements, rights of way, or strips of land, where necessary, for utilities and sewer facilities over the Common area to serve the Common Area and the Lots.

(d) Maintain such policy or policies of insurance as may be permitted or allowed in this Declaration and the By-laws.

(e) Employ or contract with a professional manager or management company to perform all or any part of the duties and responsibilities of the Association, and to delegate its powers to committees, officers and employees as permitted by law. Any such agreement shall be for a term not in excess of three (3) years, subject to cancellation by either party without cause or payment of a termination fee, upon ninety (90) days written notice. A non-professional manager may be designated only upon the affirmative vote of seventy-five percent (75%) of the Members.

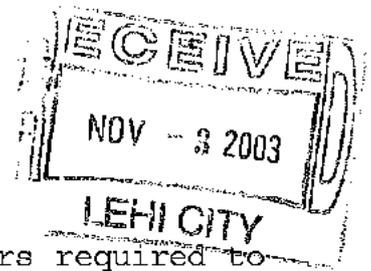
(f) After fifteen (15) days written notice, without being liable to any Owner, enter upon any Lot, for the purpose of enforcing by peaceful means, the provisions of this Declaration, or for the purpose of maintaining or repairing any such area as required by this Declaration.

(g) Maintain all sidewalks located upon the Common Area, including cleaning, snow removal, and periodic repairs.

(h) Maintain and repair all fences within the Common Area.

(i) Maintain and repair all landscaping installed by Declarant and/or the Association on all roads and streets and common areas.

(j) Maintain and repair all sprinkling systems within the Common Area.



(k) Exercise any and all additional powers required to accomplish the duties and functions provided for in this Declaration.

(l) Provide snow removal for driveways and sidewalks on all Lots up to the front entrance of the homes located on the Lots which have agreed to pay for this optional Association service.

(m) Provide landscaping maintenance for all Lots which have agreed to pay for this optional Association service.

(n) Maintain and repair landscaping on all Lots which the Association determines do not meet minimum standards for the community.

(o) Install landscaping on all Lots which do not meet the minimum standards for the community within seven (7) months of substantial completion of a dwelling unit.

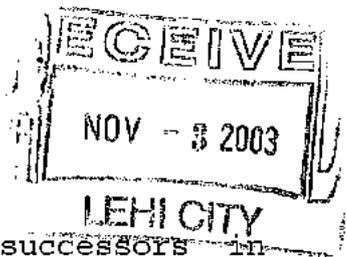
(p) Maintain and repair the exterior surface of the roofs of all Dwelling Units (if the Association elects to assume responsibility for exterior surface maintenance of roofs).

(q) Abide by all of the terms and conditions of all contracts entered into by Declarant for the benefit of future Owners.

ARTICLE VI

Covenant to Pay Maintenance Assessments

Section 1. Creation of Lien and Personal Obligation to Pay Assessments. Declarant, for each Lot owned by it, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association (1) annual Common Assessments for Common Expenses, (2) Capital Improvement Assessments, (3) Special Assessments, (4) Reconstruction Assessments, (5) Optional Assessments, if any, and (6) Transfer Assessments, such assessments to be established and collected as hereinafter provided. Such assessments, together with interest, costs, and reasonable attorney's fees for the collection thereof, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment fell due. Subject to the provisions of this Declaration protecting first Mortgagees, the personal obligation



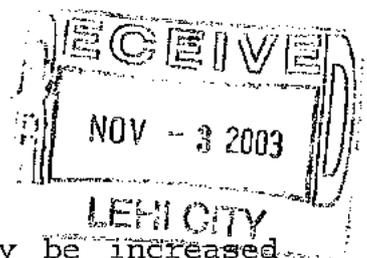
for delinquent assessments shall pass to the successors in interest of such Owner. The Board shall establish at least two (2) separate accounts (the "Maintenance Funds") into which shall be deposited all monies paid to the Association. At least one of the accounts (the "Operating Fund") shall include funds for replacement, painting, repairs and operations which would reasonably be expected to occur on an annual or more frequent basis. At least one of the accounts (the "Reserve Fund") shall include such funds as the Board determines shall constitute an adequate and reasonable reserve for replacement and repairs which would reasonably be expected to occur less frequently than on an annual basis. The Board shall not co-mingle any amounts deposited into any of the separate accounts.

Section 2. Purpose of Common Assessments. The Assessments levied by the Association shall be used to promote the common health, safety, benefit, recreation and welfare of the Owners and for the improvement and maintenance of the Common Area as provided herein. The Assessments shall also be for an adequate reserve to be used as appropriate for maintenance, repairs and replacement of those elements of the Common Area that must be replaced on a periodic basis. However, disbursements from the Reserve Fund shall be made by the Board only for the specific purposes specified in this Article VI. Disbursements from the Operating Fund shall be made by the Board for such purposes as are necessary for the discharge of its responsibilities herein for the common benefit of all of the Owners, other than those purposes for which disbursements from the Reserve Fund are to be used. Nothing in this Declaration shall be construed in such a way as to permit the Association to use any assessments to abate any nuisance or annoyance emanating from outside the boundaries of the Property. Nothing contained herein shall limit, preclude or impair the establishment of additional Maintenance Funds by the Association, so long as the amounts deposited into such Funds are allocated for specified purposes authorized by this Declaration.

Section 3. Damage to Common Area by Owners. Any maintenance, repairs or replacements completed by the Association arising out of or caused by the willful or negligent act of the Owner, his family, guests, invitees or lessees shall be done at said Owners' expense, or a Special Assessment therefore shall be made against his Lot.

Section 4. Basis of Maximum Common Assessment. Until January 1st of the year immediately following the conveyance of the first Lot in the Property to any Owner, the maximum Common Assessment under Article VI shall be Ninety-Five Dollars (\$95.00) per Lot per month.

(a) From and after January 1st of the year immediately following the conveyance of the first Lot to an Owner,



the maximum annual Common Assessment may be increased by the Board above the annual Common Assessment for the previous year, effective January 1st of each year, not more than the greater of: (1) ten percent (10%); or (2) the percentage by which the area Consumer Price Index for All Items, of the U.S. Bureau of Labor, has increased as of the date of the increase over the level of said index as of the date the Common Assessment was last established.

(b) From and after January 1st of the year immediately following the conveyance of the first Lot to an Owner, the annual Common Assessment may be increased by the Members above the greater of ten percent (10%) or the percentage determined with respect to the Consumer Price Index referred to above, by the vote or written assent of fifty-one percent (51%) of each class of Members of the Association who are in attendance at a meeting at which there is a quorum present and which meeting was called for the purpose of dealing with such assessment.

(c) The Board may fix an annual Common Assessment at any amount not in excess of the maximum.

Section 5. Capital Improvement and Reconstruction Assessments. In addition to any Common Assessments, the Board may levy, in any assessment year, a Capital Improvement Assessment or Reconstruction Assessment applicable to the year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement or other such addition upon the Property, including fixtures and personal property related thereto; provided that the total of any such assessment which is in excess of Ten Thousand Dollars (\$10,000.00) shall require the vote or written assent of fifty-one percent (51%) of each class of Members of the Association who are in attendance at a meeting at which there is a quorum present and which meeting was called for the purpose of dealing with such assessments.

Section 6. Notice and Quorum for any Action Authorized Under Section 4 and 5. Written notice of any meeting called for the purpose of taking any action by the Members authorized under Sections 4 and 5 above shall be sent to all Members not 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-one percent (51%) of all votes of each class of Membership 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 twenty-five percent

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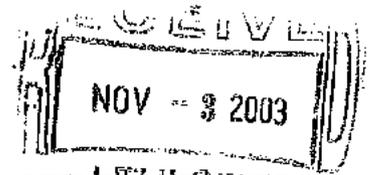
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(25%) of the voting power of the Association. No such ~~subsequent~~ meeting shall be held more than thirty (30) days following the preceding meeting.

Section 7. Equal Rate of Assessment. Common Assessments, Capital Improvement Assessments and Reconstruction Assessments provided for in this Article VI must be fixed at an equal rate for all Lots. Provided, however, if the Association elects to insure individual Dwelling Units, the Association may make such equitable adjustments to the Common Assessments to reflect the size and value differentials between the various Dwelling Units. Also, the Association may levy Optional Assessments to reasonably reflect the fact that some lots are receiving substantially different services, provided that such Optional Assessments shall not be more than fifty percent (50%) of the Common Assessments on all other Lots. Notwithstanding the foregoing, with respect to Lot 143 only, such Optional Assessment shall not be more than one hundred percent (100%) of the Common Assessments on all other Lots. Provided further, however, that the Association may, subject to the provisions of Section 3 of this Article, levy Special Assessments against particular Owners who have caused the Association to incur special expenses due to willful or negligent acts of said Owners, their guests or agents. All Common Assessments shall be collected on a regular monthly basis by the Board.

Section 8. Date of Commencement of Common Assessments; Due Date. All assessments provided for herein shall be paid in regular installments after the assessment is made. The annual Common Assessment shall commence as to particular Lots within each Phase of development, as provided for herein, on the day of the closing of the sale or conveyance of any particular Lot upon which is located a substantially completed Single Family Detached Home to any contract purchaser or Owner with a proper proration on any monthly assessment if the closing takes place on a day other than the first day of the month. The first annual Common Assessment shall be adjusted according to the number of months remaining in the fiscal year as set forth in the By-laws. The Board shall fix the amount of the annual Common Assessment against each Lot at least thirty (30) days in advance of each Common Assessment period. Written notice of any change in the amount of the annual Common Assessment shall be sent to every Owner subject thereto, at least thirty (30) days prior to the effective date of such change. The due dates shall be established by the Board. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer or agent of the Association, setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments against a Lot shall be binding upon the Association as of the date of its issuance.



The Board shall cause to be prepared an annual balance sheet and operating statement reflecting income and expenditures of the Association for each fiscal year, including deposits in and withdrawals from the Reserve Fund and the Operating Fund, and shall cause to be distributed a copy of each such statement to each Member, and to each First Mortgagee who has filed a written request for copies of the same with the Board, in the manner provided in the By-laws of the Association. At least sixty (60) days prior to the beginning of each fiscal year, the Board shall prepare and distribute to the Members, a written, itemized estimate (budget) of the expenses to be incurred by the Association during such year in performing its functions under this Declaration (including a reasonable provision for contingencies and deposits into the Reserve Fund, less any expected income and accounting for any surplus from the prior year's Maintenance Funds).

Each annual Common Assessment shall constitute an aggregate of separate assessments for each of the Maintenance Funds, reflecting an itemization of the amounts assessed and attributable to prospective deposits into the Reserve Fund, the Operating Fund and any other Maintenance Funds established by the Association. If the estimated sums prove inadequate for any reason, including nonpayment of any Owner's annual Common Assessment, the Board may, at any time, levy supplemental Common Assessments, subject to provisions of Section 4 of this Article, for any of the Maintenance Funds which shall be assessed equally against the Owner of each Lot.

Each Annual Common Assessment may be paid by the Owner to the Association in one check or payment, or in separate checks, as payments attributable to deposits into specified Maintenance Funds. In the event that any installments of a Common Assessment payment is less than the amount assessed and the payment does not specify the Maintenance Fund or Funds into which it should be deposited, the receipt of the Association from the Owner shall be credited in order of priority first to the Operating Fund, until that portion of the Common Assessment has been satisfied, and second to the Reserve Fund.

At the end of any fiscal year of the Association, the Owners may determine that all excess funds remaining in the Operating Fund, over and above the amounts used for the operation of the Association, may be returned to the Members proportionately, or may be retained by the Association and used to reduce the following year's Common Assessments or may be deposited in the Association's reserve fund. Notwithstanding anything contained in the Articles or By-laws to the contrary, if prior to dissolution of the Association the Association has not obtained tax exempt status from both the Federal and State Governments, then upon such dissolution of the Association, any amounts remaining in the Reserve Fund shall be distributed to or for the

benefit of the Members in a proportion equal to their individual, respective contributions.

Section 9. Exempt Property. The following property subject to this Declaration shall be exempt from liens resulting from assessments herein:

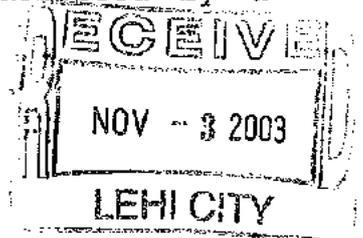
- (a) All Properties dedicated to and accepted by a local public authority, and
- (b) The Common Area.

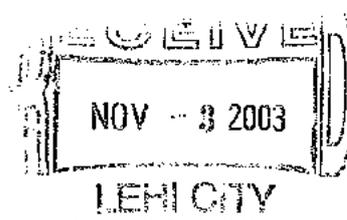
ARTICLE VII

Effect of Non-Payment of Assessments

Remedies of the Association

Section 1. Effect of Non-Payment of Assessments; Remedies of the Association. Any installment of a Common Assessment, Capital Improvement Assessment, Special Assessment or Reconstruction Assessment not paid within thirty (30) days after the due date shall bear interest from the due date of such installment at the rate of eighteen percent (18%) per annum. If any installment of an assessment is not paid within thirty (30) days after it is due, the Owner responsible therefor may be required further by the Board to pay a late charge of Fifteen Dollars (\$15.00) or fifteen percent (15%) of the amount of the delinquent installment, whichever is greater. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot. If any installment of a Common Assessment is not paid within thirty (30) days after its due date, the Board shall mail an acceleration notice to the Owner and to each First Mortgagee of a Lot which has requested a copy of the notice. The notice shall specify (1) the fact that the installment is delinquent, (2) the action required to cure the default, (3) a date, not less than thirty (30) days from the date the notice is mailed to the Owner, by which such default must be cured, and (4) that failure to cure the default on or before the date specified in the notice may result in acceleration of the balance of the installments of the Common Assessment for the then current fiscal year and the sale of the Lot. The notice shall further inform the Owner of his right to cure after acceleration and to bring a court action to assert the non-existence of a default or any other defense of the Owner to acceleration and sale. If the delinquent installments of Common Assessments and any charges thereon are not paid in full on or before the date specified in the notice, the Board, at its option, may declare all of the unpaid balance of the annual Common





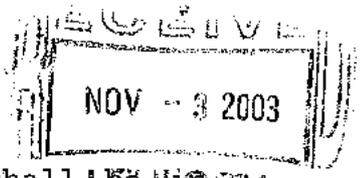
Assessment to be immediately due and payable without further demand and may enforce the collection of the full Common Assessment and all charges thereon in any manner authorized by law and this Declaration.

Section 2. Notice of Assessment. No action shall be brought to enforce any assessment lien provided for herein, unless at least thirty (30) days has expired following the date a Notice of Assessment is deposited in the United States mail, certified or registered, postage prepaid to the Owner of the Lot, and a copy thereof has been recorded by the Association in the office of the County Recorder in which the Property is located; said Notice of Assessment must recite a good and sufficient legal description of any such Lot, the record Owner or reputed Owner thereof, the amount claimed (which may at the Association's option include interest on the unpaid assessment at eighteen percent (18%) per annum, plus reasonable attorney's fees and expenses of collection in connection with the debt secured by said lien), and the name and address of the Association. Such Notice of Assessment shall be signed and acknowledged by an officer of the Association, and said lien shall be prior to any declaration of homestead recorded after the date on which this Declaration is recorded. The lien shall continue until fully paid or otherwise satisfied.

Section 3. Foreclosure. Any such sale provided for above may be conducted by the Board, its attorneys or other persons authorized by the Board in accordance with the provisions of the Utah Code Annotated, 1953 as amended, applicable to the exercise of powers of foreclosure sale in Mortgages and powers of sale in Deeds of Trust, or in any other manner permitted by law. The Association, through duly authorized agents, shall have the power to bid on the Lot at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same.

Section 4. Curing of Default. Upon the timely curing of any default with respect to which a Notice of Assessment was filed by the Association, the officers thereof shall record an appropriate Release of Lien, upon payment by the defaulting Owner of a fee, to be determined by the Association, but not to exceed an amount equal to the last monthly common assessment fee, to cover the costs of preparing and recording such release. A certificate executed and acknowledged by any two (2) Members of the Board stating the indebtedness secured by the lien upon any Lot created hereunder shall be conclusive upon the Association and the Owners as to the amount of such indebtedness as of the date of the certificate, in favor of all persons who rely thereon in good faith. Such certificate shall be furnished to any Owner upon request at a reasonable fee, not to exceed fifteen percent (15%) of the last monthly common assessment fee.

Section 5. Cumulative Remedies. The assessment liens



and the rights to foreclosure and sale thereunder, shall be in addition to and not in substitution for, all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid assessments, as above provided.

Section 6. Subordination of the Lien to First Mortgage. The lien of assessment provided for herein shall be subordinate to the lien of any first Mortgage (meaning any recorded Mortgage with first priority or seniority over other Mortgages) made in good faith and for value and recorded prior to the date on which the assessment came due. Sale or transfer of any Lot shall not affect the assessment lien. The sale or transfer of any Lot pursuant to the Mortgage foreclosure of first mortgage or deed in lien thereof shall extinguish the lien of such assessments as to the installments which became due prior to such sale or transfer. No sale or transfer shall relieve the Owner from personal liability for such assessment, nor such Lot from liability for any installments or assessments thereafter becoming due or from the lien thereof.

ARTICLE VIII

Architectural Control

Section 1. Members of Committee. The Architectural Committee shall consist of three (3) members. The initial members of the Architectural Committee shall consist of representatives of the Declarant. Each of said persons shall hold office until the election of the first Board by the Membership of the Association. Thereafter, new members of the Architectural Committee shall be appointed by the Board and shall hold office until such time as they have resigned or have been removed or their successor has been appointed, as provided herein. Members of the Architectural Committee may be removed at any time with cause. The Board shall have the right to appoint and remove all members of the Architectural Committee.

Section 2. Review of Proposed Construction. Subject to Article X, Section 5, of this Declaration, no building, fence, wall, deck, patio cover, dog run, front storm door, satellite dish, driveway, front or rear yard landscaping or other improvement or fixture shall be commenced, painted, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and color and location in relation to surrounding structures and topography by the Architectural Committee. The Architectural Committee shall approve proposals or plans and specifications submitted for its

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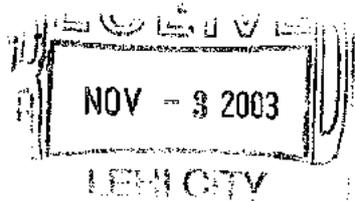
approval only if it deems that the construction, alterations or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of the surrounding area of the Property as a whole, that the appearance of any structure affected thereby will be in harmony with the surrounding structures, and that the upkeep and maintenance thereof will not become a burden on the Association. The Architectural Committee may condition its approval of proposals or plans and specifications on such changes therein as it deems appropriate, or upon the agreement by the Owner submitting the same to grant appropriate easements to the Association for the purpose of maintenance, and may require submission of additional plans and specifications or other information and agreements prior to approving or disapproving material submitted. The Architectural Committee may also issue rules or guidelines setting forth procedures for the submissions of plans for approval, requiring a fee payable to the Association to accompany each application for approval, or additional factors which it will take into consideration in reviewing submissions. The Architectural Committee may provide that the amount of such fee shall be uniform, or that it shall be determined in any other reasonable manner, such as by the reasonable costs of the construction, alterations or additions contemplated, provided that in no event shall such fee exceed the amount of the last monthly common assessment fee. The Architectural Committee may require such detail in plans and specifications submitted for its review as it deems proper, including, without limitation, floor plans, site plans, drainage plans, elevation drawings and descriptions or samples of exterior materials and colors. Until receipt by the Architectural Committee of any required plans and specifications, the Architectural Committee may postpone review of any plans submitted for approval.

Section 3. Meeting of the Architectural Committee.

The Architectural Committee shall meet from time to time as necessary to perform its duties hereunder. The Architectural Committee may from time to time, by resolution unanimously adopted in writing, designate a Committee Representative (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the Architectural Committee, except the granting of a variance pursuant to Section 8 of this Article VIII. In the absence of such designation, the vote of any two (2) Members of the Committee taken without a meeting, shall constitute an act of the Committee.

Section 4. No Waiver of Future Approvals.

The approval of the Architectural Committee of any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval and consent of the Architectural Committee shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or



matter whatever subsequently or additionally submitted for approval or consent.

Section 5. Compensation for Members. The members of the Architectural Committee shall receive reasonable compensation for services rendered, including reimbursement for expenses incurred by them in the performance of their duties hereunder, as determined by the Board from time to time.

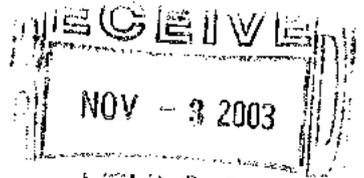
Section 6. Inspection of Improvement. Inspection of any Improvement and the correction of defects therein shall proceed as follows:

(a) Upon the completion of any Improvement for which approved plans are required under this Article VIII, the Owner shall give written notice of completion to the Architectural Committee.

(b) Within sixty (60) days thereafter, the Architectural Committee or its duly authorized representative may inspect such Improvement. If the Architectural Committee finds that such work was not done in substantial compliance with the approved plans, it shall notify the Owner in writing of such noncompliance within such sixty-day period, specifying the particulars of noncompliance, and shall require the Owner to remedy the same.

(c) If upon the expiration of thirty (30) days from the date of such notification the Owner shall have failed to remedy such noncompliance, the Architectural Committee shall notify the Board in writing of such failure. Upon Notice and Hearing the Board shall determine whether there is a noncompliance and, if so, the nature thereof and the estimated costs of correcting or removing the same. If a noncompliance exists, the Owner shall remedy or remove the same within a period of not more than forty-five (45) days from the date of announcement of the Board ruling. If the Owner does not comply with the Board ruling within such period, the Board, at its option, may either remove the noncomplying Improvement or remedy the noncompliance, and the Owner shall reimburse the Association, upon demand, for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the Owner to the Association, the Board shall levy a Special Assessment against such Owner for reimbursement.

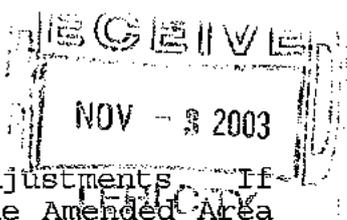
(d) If for any reason the Architectural Committee fails to notify the Owner of any noncompliance within



sixty (60) days after receipt of said written notice of completion from the Owner, the Improvement shall be deemed to be in accordance with said approved plans.

Section 7. Non-Liability of Architectural Committee Members. Neither the Architectural Committee nor any member thereof, nor its duly authorized Committee Representative, shall be liable to the Association or to any Owner for any loss, damage or injury arising out of or in any way connected with the performance of the Architectural Committee's duties hereunder, unless due to the willful misconduct or bad faith of the Architectural Committee. The Architectural Committee shall review and approve or disapprove all plans submitted to it for any proposed Improvement, solely on the basis of aesthetic consideration and the overall benefit or detriment which would result to the immediate vicinity and the Property generally. The Architectural Committee shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes, excepting that the Architectural Committee hereby waives the non-liability provision of this paragraph to the extent necessary to obtain insurance as provided for in Article XII hereof.

Section 8. Variances. The Board of Directors of the Association, upon a favorable recommendation of the Architectural Committee, may authorize variances from compliance with any of the architectural provisions of this Declaration or any Supplemental Declaration, including restrictions upon height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration may require. Such variances must be evidenced in a written document signed by at least two (2) officers or members of the Board of Directors of the Association. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration or any Supplemental Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such variance shall not operate to waive any of the terms and provisions of this Declaration or any Supplement Declaration for any purpose except as to the particular portion of the Property and particular provisions hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting misuse of the premises, including, but not limited to, zoning ordinances, lot set-back lines or requirements, the approved Lehi City Area Plan and Subdivision Plat, imposed by any governmental or municipal authority. In addition, each variance

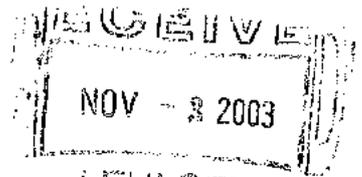


must also be approved by the Lehi City Board of Adjustments. If such variance does not meet the requirements of the Amended Area Plan and/or recorded Subdivision Plat, it must also be approved by the Lehi City Board of Adjustments. Notwithstanding anything herein to the contrary, all Lot owners shall have the right to construct a reasonable privacy screen or fence which is attached to the home on the Lot, subject to obtaining approval through the process set forth above, which approval shall not be unreasonably withheld. In considering the request for a variance with respect to a privacy screen or fence, the Board shall consider the configuration, size and materials and make sure that the interests of the other Lot owners and the Association are protected.

ARTICLE IX

Maintenance and Repair Obligation

Section 1. Maintenance Obligations of Owners. Subject to the duty of the Association to provide for maintenance as provided in Section 2, of this Article IX, it shall be the duty of each Owner, at his sole cost and expense, subject to the provisions of this Declaration regarding Architectural Committee approval, to maintain, repair, replace and restore areas of the Property subject to his exclusive control, including any improvement thereon, in a neat, sanitary and attractive condition. Areas subject to the exclusive control of the Owner shall be deemed to include, but not be limited to, the structure of the Owner's Dwelling Unit and all exterior and interior portions of the Owner's Dwelling Unit. In the event that any Owner shall permit any Improvement, which is the responsibility of such Owner to maintain, to fall into disrepair or fail to so maintain such Improvement so as to create a dangerous, unsafe, unsightly or unattractive condition, or to otherwise violate this Declaration, the Architectural Committee shall have the right, but not the duty, upon fifteen (15) days prior notice to the Owner of such Lot, to correct such condition and to enter upon such Owner's Lot to make such repairs or to perform such maintenance and the costs thereof shall be charged to the Owner. Said costs shall constitute a Special Assessment and shall create a lien enforceable in the same manner as other assessments as set forth in this Declaration. The Owner shall pay promptly all amounts due for such work, and the costs and expenses of collection may be added, at the option of the Board, to the amounts payable by each Owner as Common Assessments. Owners who purchase a Lot without full landscaping shall have the Lot fully landscaped, including a full sprinkling system, no later than sixty (60) days after taking occupancy of the home located upon the Lot. Provided, however, Owners who take occupancy of the home between November 1st through April 30th shall have the landscaping completed no later than the following June 1st.

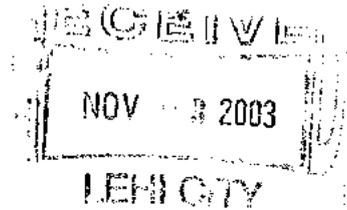


Section 2. Maintenance Obligations of Association. In addition to the provisions of Section 1 of this Article IX, the Association shall maintain in good order and repair all of the Common Area and any Improvement thereon, and all perimeter fences. In addition to the maintenance and repairs set forth above, the Association shall provide all necessary landscaping and gardening to properly maintain and periodically replace when necessary the trees, plants, grass and other vegetation which is on the Common Area and on the Lots which are maintained by the Association. The Association shall further maintain, reconstruct, replace and refinish any paved surface in the Common Area. All of the foregoing obligations of the Association shall be discharged when and in such manner as the Board shall determine in its judgment to be appropriate.

Section 3. Damage and Destruction Affecting Dwelling Unit, Duty to Rebuild. If all of or any portion of any Lot or Dwelling Unit is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner of said Lot or Dwelling Unit to rebuild, repair or reconstruct said Dwelling Unit in a manner which will restore it substantially to its appearance and condition immediately prior to the casualty.

Section 4. Variance in Exterior Appearance and Design. Any Owner who has suffered damage may apply for approval to the Architectural Committee for permission to reconstruct, rebuild or repair his Dwelling Unit in a manner which will provide for an exterior appearance and design different from that which existed prior to the date of the casualty. Application for such approval shall be made in writing together with full and complete plans and specifications, working drawings and elevations showing the proposed reconstructions and the end result thereof. The Architectural Committee shall grant such approval only if the design proposed by the Owner shall result in a finished Dwelling Unit in harmony with the exterior design of other Dwelling Units on the Property. Failure of the Architectural Committee to act within thirty (30) days after receipt of such a request in writing coupled with the drawings and plot plans showing the full and complete nature of the proposed changes shall constitute approval thereof.

Section 5. Time Limitation. The Owner or Owners of any damaged Dwelling Unit, the Association and the Architectural Committee shall be obligated to proceed with all due diligence hereunder, and the responsible party shall commence reconstruction within six (6) months after the damage occurs and complete reconstruction within one (1) year after damage occurs, unless prevented by causes beyond their reasonable control.

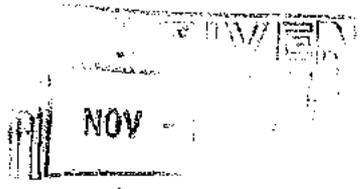


Use Restrictions

All real property within the Property shall be held, used and enjoyed pursuant to the following limitations and restrictions, subject to the exemption of the Declarant as provided in Section 5 of this Article X:

Section 1. Single Family Residences, Business or Commercial Activity. Each Lot shall be used as residence for a single family. No part of the Property shall ever be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending or other such non-residential purpose, other than a home office permitted under applicable zoning ordinances, without the vote of seventy-five percent (75%) of the votes eligible to be cast by Members of the Association or the approval of the Architectural Control Committee. Provided, further, however, the Association shall never be permitted to allow more than twenty-five percent (25%) of the lots to be used as a non-owner occupied residence. No outbuildings shall be constructed on any Lot and nothing shall be placed upon or attached to the roof of any home constructed on a Lot. Notwithstanding any provisions herein to the contrary, nothing herein shall be construed as prohibiting the Declarant, its successors and assigns, from using any portion of the Property for a model home site, and display and sales office during the construction and sales period and for a period of three (3) years thereafter in accordance with Article II Section 1 (h), of this Declaration. Provided, however, any such model home site, and/or display and sales office must be approved as a "conditional use" by the Lehi City Planning Commission.

Section 2. Nuisances. No noxious or offensive activity (including but not limited to the major repair of motor vehicles) shall be carried on, in or upon any Lot or the Common Area, nor shall anything be done thereon which may be or become an unreasonable annoyance or nuisance to any other Owner. No loud noises or noxious odors shall be permitted on the Property, and the Board shall have the right to determine in accordance with the By-laws if any noise, odor or activity producing such noises, odor or interference constitutes a nuisance. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes), noisy or smokey vehicles, large power equipment or large power tools, satellite dishes, radio or television antennas, evaporative coolers, permanent flag poles, or items which may unreasonably interfere with television or radio reception of any Owner in the Property, shall be located, used or placed on any portion of the Property, or exposed to the view of other Owners without the prior



written approval of the Architectural Committee.

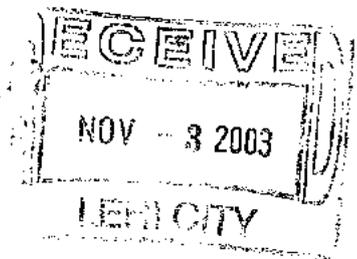
Section 3. Signs. No sign, poster, display, billboard or other advertising device of any kind shall be displayed to the public view on any portion of the Property or any Lot, without the prior written consent of the Architectural Committee, except signs used by Declarant, their successors or assigns, to advertise the Property during the construction and sale period. All signs or billboards and the regulations promulgated for the regulation thereof shall conform to the requirements of all applicable governmental agencies, including but not limited to the laws and ordinances of Lehi City, Utah County, and the State of Utah.

Section 4. Common Area Facilities. Nothing shall be altered or constructed on or removed from the Common Area except upon the written consent of the Association.

Section 5. Declarant's Exemption. The Declarant or its successors or assigns may undertake the work of constructing Dwelling Units and developing all of the Lots included within the Property and any annexation thereto. The completion of that work and sale, rental and other disposal of Dwelling Units is essential to the establishment and welfare of the Property as a residential community. As used in this Section and its subparagraphs, the words "its successors or assigns" specifically do not include purchasers of Lots improved with completed Dwelling Units. In order that said work may be completed and the Property be established as a fully occupied residential community as rapidly as possible, no Owner nor the Association shall do anything to interfere with, and nothing in this Declaration shall be understood or construed to:

(a) Prevent the Declarant, its successors or assigns, or its or their contractors or subcontractors, from doing on any Lot owned by the Declarant, whatever it determines to be necessary or advisable in connection with the completion of said work, including without limitation the alteration of its construction plans and designs as the Declarant deems advisable in the course of development; or

(b) Prevent the Declarant, its successor or assigns, or its or their representatives, from erecting, constructing, or maintaining on any Lot, or portion thereof, owned or controlled by the Declarant, or its successors or assigns or its or their contractors or subcontractors, such structures as may be reasonably necessary for the conduct of its or their business of completing said work and establishing the Property as a residential community and disposing of the same in Lots by sale, lease or otherwise; or



(c) Prevent the Declarant, its successors or assigns, or its contractors or subcontractors, from conducting on any Lot, or any portion thereof, owned or controlled by the Declarant, or its successors or assigns, its business of developing, subdividing, grading and constructing Dwelling Units and other improvements in the Property as a residential community and of disposing of Dwelling Units thereon by sale, lease or otherwise; or

(d) Prevent the Declarant, its successors or assigns, or its contractors or subcontractors, from maintaining such sign or signs on any Lot owned by or controlled by it as may be necessary in connection with the sale, lease or other marketing of Lots and Dwelling Units; or

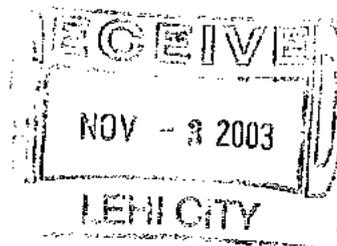
(e) Prevent the Declarant, at any time prior to acquisition of title to a Lot by a purchaser from the Declarant, to establish on that Lot additional licenses, reservations and rights-of-way to itself, to utility companies, or to others as may from time to time be reasonably necessary to the proper development and disposal of the Property. The Declarant shall repair at its own cost or expense any damage caused by the Declarant to the Common Area as well as such damages caused to Lots or property still under the Declarant's control.

(f) Prevent the Declarant from having unrestricted access to the Property until all Dwelling Units have been constructed and sold. The Declarant shall have the right to control all access gates until all Dwelling Units have been constructed and sold.

Section 6. Pets and Other Animals. No bar, coop, shed, sty or building of any type shall be constructed, kept, maintained or permitted for the purposes of housing pigs, cows, sheep, goats, horses, poultry, or other livestock at any place within the limits of the Property. Each Lot Owner may keep and maintain three (3) common household pets, unless otherwise provided by the affirmative vote of seventy-five percent (75%) of the Members.

Section 7. Parking. No long-term parking (over 48 hours) of any vehicle shall be permitted on the Common Area or on any Lot, except in a garage.

Section 8. Rubbish. No rubbish shall be stored or allowed to accumulate anywhere on the Property, except in sanitary containers and at such locations as the Board shall determine from



time to time.

Section 9. Insurance Rates. Nothing shall be done or kept on the Property which will increase the rate of insurance on any property insured by the Association without the approval of the Board, nor shall anything be done or kept on the Property which would result in the cancellation of insurance on any property insured by the Association or which would be in violation of any law.

Section 10. Front Window Treatment. No blinds, draperies, or other window coverings or treatments shall be permitted with respect to Dwelling Unit windows which face any road, whether public or private, except those which are conservative in style or otherwise approved by the Architectural Committee. Provided, however, such approval shall not be unreasonably withheld.

ARTICLE XI

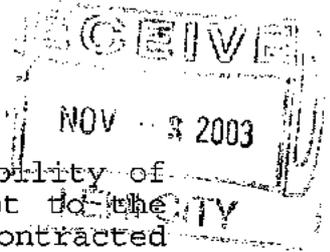
Damage or Destruction to Common Area

Damage to or destruction of all or any portion of the Common Area shall be handled in the following manner, notwithstanding any provision in this Declaration to the contrary:

(a) In the event of damage or destruction to the Common Area, the Association shall cause such Common Area to be repaired and any Improvement thereon to be reconstructed substantially as it previously existed.

(b) If the insurance proceeds are insufficient to effect total restoration, then the Association shall cause such repair and reconstruction to be substantially as it previously existed and the difference between the insurance proceeds and the actual cost shall be levied as a Reconstruction Assessment equally against each of the Lot Owners in accordance with the provisions of Article VI, Section 5, of this Declaration.

(c) Each Owner shall be liable to the Association for any damage to the Common Area not fully covered by insurance which may be sustained by reason of the negligence or willful misconduct of said Owner or of his family and guests, including minors and adults. Notwithstanding the foregoing, the Association reserves the right to charge a Special Assessment equal to the increase, if any, in the insurance premium directly attributable to the damaged caused by such Owner. In



the case of joint ownership of a Lot, the liability of such Owners shall be joint and several, except to the extent that the Association has previously contracted in writing with such joint Owners to the contrary. The cost of correcting such damage shall also be a Special Assessment against the Lot owned by Owner.

ARTICLE XII

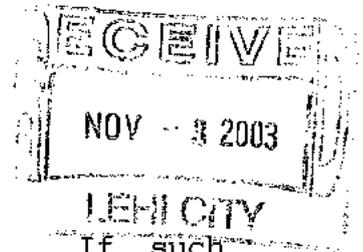
Insurance

Section 1. Common Area. The Association shall keep any Improvement and all other insurable property on the Common Area insured against loss or damage by fire for the full insurance replacement costs thereof and including extended coverage for not less than 100% of the replacement cost of insurable property, and shall obtain insurance against such other hazards and casualties as the Association may deem desirable. The Association may also insure any other property, whether real or personal, owned by the Association or by members of the Association, against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance. The insurance coverage with respect to the Common Area shall be written in the name of, and the proceeds thereof shall be payable to the Association, for the benefit of the Owners. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association shall be expenses payable by including the same in the Common Assessments made by the Association.

Section 2. Insurance Obligations of Owners. Unless the Association elects to insure each Dwelling Unit (in which case the individual Owner shall be responsible for any co-insurance or deductible with respect to any losses), each Owner shall insure his entire Dwelling Unit, including the structural portions of the Dwelling Unit, against loss or damage by fire or by any other casualty, under the standard form of extended endorsement and broad form now in use in the State of Utah or under such other insurance as may be required by a Mortgagee of the Dwelling Unit.

All such insurance shall be for the full replacement value of the Dwelling Unit with automatic inflation coverage. All such policies shall contain a provision that the same shall not be canceled or terminated except upon at least thirty (30) days written notice to the Association.

Section 3. Replacement or Repair of Property. In the event of damage to or destruction of any part of the Common Area, or any Improvement thereon or any other portion of the Property insured by the Association, the Association shall repair or replace the same from the insurance proceeds available, subject to



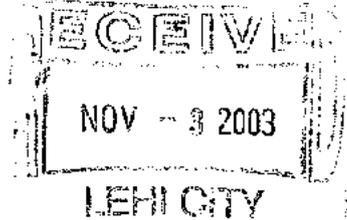
the provisions of Article XI of this Declaration. If such insurance proceeds are insufficient to cover the costs of such repair or replacement of the property damaged or destroyed, the Association may make a Reconstruction Assessment against all Lot Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other Common Assessment made against such Lot Owners, in accordance with the provisions of Article VI, Section 5, of this Declaration. In the event of total destruction of all of the Improvements on the Property, the proceeds of the insurance carried by the Association shall be divided equally among the Lot Owners, provided that the balance then due on any valid encumbrance of record shall be first paid in order of priority, before the distribution of any proceeds to an Owner whose Lot is so encumbered.

Section 4. Waiver of Subrogation. As to each policy of insurance maintained by the Association, which will not be voided or impaired thereby, the Association hereby waives and releases all claims against the Board, the Owners, the Manager, the Declarant, and the agents and employees of each of the foregoing with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but only to the extent that insurance proceeds are received in compensation for such loss.

Section 5. Liability Insurance. The Association shall obtain comprehensive public liability insurance including medical payments, liquor liability insurance and malicious mischief, in the minimum amount of \$1,000,000 per occurrence for personal injury and/or property damage arising from the activities of the Association or with respect to the Common Area including, if obtainable, a cross-liability endorsement insuring each insured against liability to each other insured. Such insurance shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners. Such insurance must include other coverage in kinds and amounts commonly required by private institutional Mortgage investors for projects similar in construction, location and use.

Section 6. Miscellaneous.

(a) **Minimum Financial Rating of Carrier.** Each hazard-insurance policy must be written by a hazard insurance carrier which has a financial rating by Best's Insurance Reports of Class VI or better. Hazard insurance policies are also acceptable from an insurance carrier which has a financial rating by Best's Insurance Reports of Class V, provided it has a general policy holder's rating of at least A. Each



carrier must be specifically licensed or authorized by law to transact business within the State of Utah.

(b) No Assessments. Policies are unacceptable where: (i) under the terms of the carrier's charter, by-laws or policy, contributions or assessments may be made against the Association or any Owner or any First Mortgagee or its successors and assign; or (ii) by the terms of the carrier's charter, by-laws or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members; or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent the Association or any Owner or any First Mortgagee, or its successors and assigns, from collecting insurance proceeds.

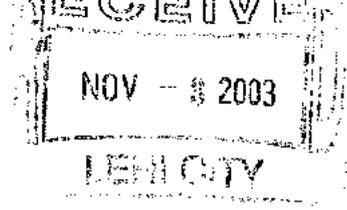
(c) Other Requirements. All policies of hazard insurance must contain or have attached the standard Mortgagee clause commonly accepted by private institutional Mortgage investors in the area in which the Property is located. The Mortgagee clause must provide that the insurance carrier shall notify the First Mortgagee named in such policies at least ten (10) days in advance of the effective date of any reduction in or cancellation of the policy.

(d) Other Insurance and General. The Association may also obtain, through the Board, Worker's Compensation Insurance and other liability insurance as it may deem desirable, insuring each Owner, the Association, the Board, members of the Architectural Committee, and the Manager from liability in connection with the Common area, the premiums for which shall be expenses payable by the Common Assessments made against the Owners. Such insurance policies shall have severability of interest clauses or endorsements which shall preclude the insurer from denying the claim of an Owner because of the negligent act of the Association or other Owners. All policies shall be reviewed at least annually by the Board and the limits increased at its discretion.

ARTICLE XIII

Mortgage Protection Clause

Notwithstanding any and all provisions hereof to the contrary, in order to induce the Federal Home Loan Mortgage Corporation (FHLMC), the Government National Mortgage Association



(GNMA) and the Federal National Mortgage Association (FNMA) to participate in the financing of the sale of Lots and Dwelling Units within the Property, the following provisions are added hereto (and to the extent these added provisions conflict with any other provisions of the Declaration, these added provisions shall control);

Section 1. Written Notification of Default. Each First Mortgagee of a Mortgage encumbering any Lot, at his written request, is entitled to written notification from the Association of any default by the Mortgagor of such Lot in the performance of such Mortgagor's obligations under this Declaration, the Articles, or the By-laws, which default is not cured within sixty (60) days after the Association learns of such default.

Section 2. Right of First Refusal. Each First Mortgagee of a Mortgage encumbering any Lot which obtains title to such Lot pursuant to the remedies provided in such Mortgage, or by foreclosure of such Mortgage, or by deed (or assignment) in lieu of foreclosure, shall be exempt from any "right of first refusal." Any right of first refusal contained in the constituent documents of the Property, or hereinafter added shall not impair the rights of a First Mortgagee to (i) foreclose or take title to a Lot pursuant to the remedies provided in the Mortgage, or (ii) accept a deed or an assignment in lieu of foreclosure in the event of default of a Mortgagor, or (iii) interfere with the subsequent sale or lease of a Lot so acquired by the First Mortgagee.

Section 3. Non-Liability for Prior Unpaid Dues or Charges. Any First Mortgagee, or a purchaser who purchases a Lot from any First Mortgagee who obtains title to a Lot pursuant to a deed (or assignment) in lieu of foreclosure, or pursuant to the remedies provided in the Mortgage or foreclosure of the Mortgage, will not be liable for such Lot's unpaid dues or charges which accrue prior to the acquisition of title to such Lot by the First Mortgagee.

Section 4. First Mortgagee Approval. Unless at least one hundred percent (100%) of the First Mortgagees (based upon one (1) vote for each Mortgage owned) of the Lots have given their prior written approval, the Association shall not be entitled to:

- (a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area owned directly or indirectly, by the Association for the benefit of the Lots (the granting of an easement of public utilities or for other public purposes consistent with the intended use of such Common Area by the Association shall not be deemed a transfer within the meaning of this clause);

(b) Change the method of determining the obligation, assessments, dues or other charges which may be levied against an Owner;

(c) By act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural control of the Lots or Dwelling Units, the maintenance of the Lots or Dwelling Units, or the maintenance of the Common Area;

(d) Fail to maintain fire and extended coverage on any insurable Improvement or property on the Common Area on a current replacement costs basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost); and

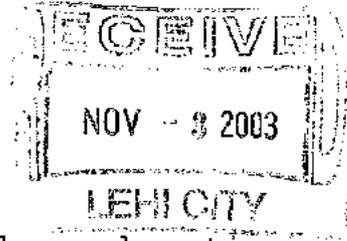
(e) Use hazard insurance proceeds for losses to any Improvement or property on the Common Area for other than the repair, replacement or reconstruction of such Improvement or property.

Section 5. Taxes and Charges in Default. First Mortgagees may, jointly and severally, pay taxes or other charges which are in default and which may or have become a charge against any portion of the Common Area and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such portion of the Common Area, and First Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

Section 6. First Mortgagee Priority. No provision of the Declaration, Articles or By-laws shall give an Owner, or any other party, priority over any rights of any First Mortgagee pursuant to its Mortgage in the case of a distribution to such Owners of insurance proceeds or condemnation awards for losses to or a taking of any of the Common Area.

Section 7. Examination of Books and Records. First Mortgagees shall have the right to examine the books and records of the Association during normal business hours.

Section 8. First Mortgagees Written Notice of Amendments and Damage. Upon written request, all First Mortgagees shall be given (i) thirty (30) days written notice prior to the effective date of any proposed material amendment to the Declaration, the Articles or By-laws, and prior to the effective date of any termination of an agreement for professional management of the Property following a decision of the Owners to assume self-management of the Property; and (ii) immediate notice following any damage to the Common Area whenever the cost of the reconstruction exceeds Ten Thousand Dollars (\$10,000.00) and as



soon as the Board learns of any threatened condemnation proceedings or proposed acquisition of any portion of the Property.

Section 9. Reserve Fund for Common Area. Association dues or charges shall include an adequate reserve fund for maintenance, repairs and replacement of those elements of the Common Area that must be replaced on a periodic basis and are payable in regular installments rather than by Special Assessments.

Section 10. First Mortgagee Written Notice of Default by Owner. A First Mortgagee, upon request, is entitled to written notification from the Association of any default by an Owner with respect to any obligation under the constituent documents of the Property which is not cured within sixty (60) days.

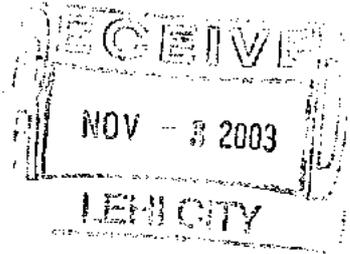
Section 11. Agreement for Professional Management. Any agreement for professional management of the Association, or any other contract providing for services of the Declarant, may not exceed three (3) years. Any such agreement must provide for termination by either party without cause, and without payment of a termination fee, on ninety (90) days written notice.

Section 12. Satisfaction of Guidelines. In addition to the foregoing, the Board may enter into such contracts or agreements on behalf of the Association as are required in order to satisfy the guidelines of the VA, the FHA, the FHLMC, the FNMA or the GNMA or any similar entity, so as to allow for the purchase, insurance or guaranty, as the case may be, by such entities of the First Mortgages encumbering Lots and/or Dwelling Units. Each Owner hereby agrees that it will benefit the Association and the Members of the Association, as a class of potential Mortgage borrowers and potential sellers of their Dwelling Units if such agencies approve the Property as a qualifying subdivision under their respective policies, rules and regulations, as adopted from time to time.

Section 13. Non-Owner Occupied Dwelling Units. No Owner may sell any Dwelling Unit constructed upon a Lot to a third party on a non-owner occupied basis without the prior written approval of the Board, which approval shall not be unreasonably withheld (provided that such approval shall not be given if granting such approval would result in more than twenty-five percent of the Dwelling Units being classified as non-owner occupied).

Section 14. Amendment to Article. Neither this Article XIII nor Section 6 of Article VII of this Declaration shall be amended without the approval of one hundred percent (100%) of the First Mortgagees.

ARTICLE XIV

Annexation of Additional Property

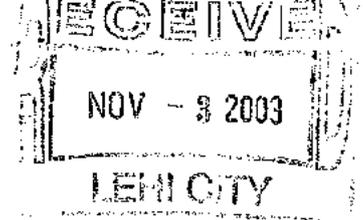
Additional real property may be annexed to the Property and such additional real property may become subject to this Declaration by any of the methods set forth hereinafter:

Section 1. Additions by Declarant. If the Declarant, its successors or assigns, shall develop, or cause to be developed, additional real property (the "Annexed Property") which is contiguous to the Property or accessible by public streets and not more than one thousand (1,000) yards from the Property, the Declarant, or its successors or assigns, shall have the right from time to time to add the Annexed Property or any portion or portions thereof to the Property and to bring the Annexed Property within the general plan and scheme of the Declaration without the approval of the Association, its Board, or Members; provided that such right of the Declarant, its successors and assigns, shall terminate ten (10) years from the date of recording this Declaration.

Section 2. Other Additions. In addition to the provisions for annexation specified in Section 1 above, additional real property may be annexed at any time to the Property by the Declarant or its assigns and brought within the general plan and scheme of this Declaration upon the approval by vote or written consent of Members entitled to exercise no less than two-thirds (2/3) of the voting power of the Class A Members, excluding the votes of the Declarant.

Section 4. Title to Common Area. Prior to the conveyance of any Lot within the Annexed Property to any individual purchaser thereof, whether such annexation was accomplished by either method set forth in Section 1 or 2 above, title to the Common Area, if any, within said Annexed Property shall be conveyed to the Association, free and clear of any and all encumbrances and liens, subject to reservations, easements, covenants, conditions and restrictions then of record, including those set forth in this Declaration.

Section 5. Notice of Addition of Property. The additions authorized under Sections 1 and 2 of this Article XIV shall be made by filing of record a Notice of Addition of Property, or other similar instrument (which Notice or instrument may contain the Supplemental Declaration, if any, affecting each Subdivision), with respect to the Annexed Property which shall be executed by the Declarant or the owner thereof and shall extend the general plan and schemes of this Declaration of the Annexed Property. The filing of record of said Notice of Addition shall



constitute and effectuate the annexation of the Annexed Property described therein, and thereupon the Annexed Property shall become and constitute a part of the Property, become subject to this Declaration and encompassed within the general plan and scheme of covenants, conditions, restrictions, reservations of easements and equitable servitudes contained herein, and become subject to the functions, powers and jurisdiction of the Association; and the Owners of Lots in the Annexed Property shall automatically become Members of the Association. Such Notice of Addition may contain such additions and modifications of the covenants, conditions and restrictions, reservations of easements and equitable servitudes contained in this Declaration as may be necessary to reflect the different character, if any, of the Annexed Property, or as the Declarant may deem appropriate in the development of the Annexed Property, and as are not inconsistent with the general plan and scheme of this Declaration. In no event, however, shall such Notice of Addition revoke, modify or add to the covenants, conditions, restrictions, reservations of easements, or equitable servitudes established by this Declaration as the same shall pertain to the Property. No addition of property shall substantially increase assessments or substantially increase the burden upon the Common Area.

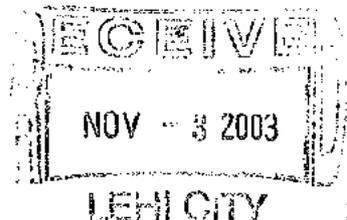
ARTICLE XV

General Provisions

Section 1. Enforcement. Lehi City shall be considered a beneficiary of the Declaration. Therefore, this Declaration may be enforced by Lehi City through whatever means available and to the extent deemed appropriate by Lehi City, in its sole discretion. In addition, this Declaration, the Articles, and the By-laws may be enforced by the Association as follows:

(a) Breach of any of the covenants contained in this Declaration, the Articles or the By-laws and the continuation of any such breach may be enjoined, abated or remedied by appropriate legal proceedings by an Owner, by the Association, or the successors-in-interest of the Association. Any judgment rendered in any action or proceeding pursuant hereto shall include a sum for attorney's fees in an amount as the court may deem reasonable in favor of the prevailing party, as well as the amount of any delinquent payment, interest thereon, costs of collection and court costs.

(b) The result of every act or omission whereby any of the covenants contained in this Declaration, the Articles or By-laws are violated in whole or in part is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a



nuisance either public or private shall be applicable against every such result and may be exercised by any Owner, by the Association or its successors-in-interests.

(c) The remedies herein provided for breach of the covenants contained in this Declaration, the Articles or in the By-laws shall be deemed cumulative, and none of such remedies shall be deemed exclusive.

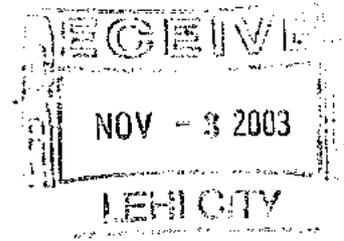
(d) The failure of the Association to enforce any of the covenants contained in this Declaration, the Articles or in the By-laws shall not constitute a waiver of the right to enforce the same thereafter.

(e) A breach of the covenants, condition or restrictions contained in this Declaration, the Articles or in the By-laws shall not affect or impair the lien or charge of any bonafide first Mortgage made in good faith and for value on any Lot or Dwelling Unit, provided, however, that any subsequent Owner of such Lot or Dwelling Unit shall be bound by said covenants, whether such Owner's title was acquired by foreclosure in a trustee's sale, or otherwise.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community and for the maintenance of the residential community. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine and neuter shall each include the masculine, feminine and neuter.

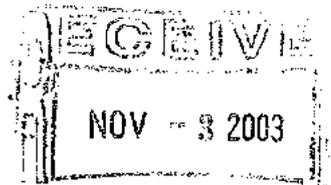
Section 4. Amendments. This Declaration may be amended only upon the approval of Lehi City and by the affirmative vote or written consent of the Owners holding not less than two-thirds (2/3) of the voting power of the Members, except with respect to matters dealt with herein which require a higher percentage for approval thereof; provided, however, that the prior written approval of at least one hundred percent (100%) of all First Mortgagees must be obtained as provided in Section 12 of Article XIII above.



Section 5. No Public Right or Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or part of the Property to the public, or for any public use.

Section 6. Constructive Notice and Acceptance. Every person who owns, occupies or acquires any right, title, estate or interest in or to any Lot or other portion of the Property does and shall be conclusively deemed to have consented and agreed to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to these restrictions is contained in the instrument by which such person acquired an interest in the Property, or any portion thereof.

Section 7. Reservation of Easements. Reciprocal easements are hereby reserved for the benefit of adjoining Lot Owners and Utah County for the control, maintenance and repair of the utilities and storm drains of adjoining Lot Owners. The Declarant expressly reserves for the benefit of all of the real property in the Property, and Owners, reciprocal easements of access, ingress and egress over all Lots, and over the Common Area, for the use and enjoyment of the Lots in accordance with this Declaration, including without limitation for installation and repair of utility services, for drainage over, across and upon adjacent Lots for water resulting from the normal use of adjoining Lots, and for maintenance and repair of any Dwelling Unit or landscaping located on any Lot. Such easements may be used by the Declarant, its successors, purchasers and all Owners, their guests, tenants, lessees and invitees, residing on or temporarily visiting the Property, for pedestrian walkways, vehicular access and such other purposes reasonably necessary for the use and enjoyment of a Lot and the Common Area. No Owner of a Lot shall interfere with the established drainage pattern over his Lot from adjoining or other Lots. Each Owner of a Lot shall make adequate provision for drainage with the approval of Utah County in the event he changes the established drainage over his Lot. For purposes of this Declaration, "Established Drainage" on any Lot is defined as the drainage conveyed to a purchaser from the Declarant. The Declarant further expressly reserves for the benefit of the Association, its agents and employees, easements of access, ingress and egress, over the Lots and the Common Area for the purpose of maintaining, repairing and installing sewer pipelines and laterals, cable television facilities, and telephone lines, in accordance with the provisions of this Declaration, and as otherwise provided by law. The Declarant, as well as Owners of Lots, and all others who shall come in contact with the Property, shall use reasonable restraints with regard to the Property when exercising any rights granted under this paragraph, and due regard shall be given to the aesthetic value, beautification, upkeep and



maintenance of all of the Property, and the use and enjoyment by an Owner of his Lot.

Section 8. Notices. Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or to the residence of such person if no address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association.

Section 9. No Representations or Warranties. No representations or warranties of any kind, express or implied, have been given or made by the Declarant or its agents or employees in connection with the Property or any portion of the Property, or any improvement thereon, its physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, costs of maintenance, taxes or regulation thereof as a planned unit development, except as specifically and expressly set forth in this Declaration and except as may be hereafter filed by the Declarant from time to time.

Section 10. Reservation of Certain Side Yard Use Easements. Easements for the benefit of certain Lots, as the same may be set forth in the Thanksgiving Village Plat Map or in deeds conveying title to the said Lots shall be reserved for the benefit of the adjoining Lot Owner for maintenance and repair of the adjoining Lot Owner's Dwelling Unit or landscaping. In addition, such easements may be used by the adjoining Lot Owner, its successors and purchasers and all their guests, tenants, lessees and invitees, residing in or temporarily visiting the adjoining Lot, for pedestrian access and such other purposes reasonably necessary for the use and enjoyment of the adjoining Lot.

Section 11. Arbitration Required. Any contracts which the Association enters into shall provide for arbitration. In the event of a dispute between the Association and Declarant which cannot be resolved by the parties, then upon ten (10) business days advance written notice from the Association to the Declarant or from Declarant to the Association, as the case may be, setting forth the issues in dispute, the dispute shall be submitted to binding arbitration by a member of the American Arbitration Association. All costs of the arbitration shall be equally shared by the parties, excluding attorney's fees which shall be the sole responsibility of the party incurring such fees.

Section 12. Potential Golf Course Liability. Each

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Owner of a Lot acknowledges that he or she has fully inspected such Lot in its relationship to the Thanksgiving Point Golf Course and its fairways, greens and driving range and accepts the same "as-is". Each Owner of a Lot which abuts the Thanksgiving Point Golf Course fairways, greens or driving range hereby releases and discharges the Declarant, Whistlestop Development, Inc., and Thanksgiving Point Golf Course and its owners, officers, directors, agents, lessors, lessees, and affiliates, from all claims, damages, liabilities and obligations concerning the use, location and design of the Thanksgiving Point Golf Course.

IN WITNESS WHEREOF, this Declaration of Covenants, Conditions and Restrictions and Reservation of Easement for Thanksgiving Village, A Planned Unit Development, has been executed as of the day and year first above written.

DECLARANT:

THANKSGIVING VILLAGE, L.C.

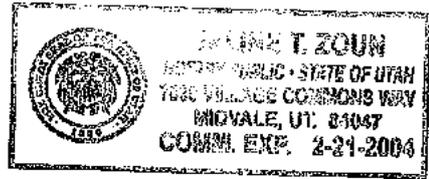
By L. Kelly Shepard

STATE OF UTAH)
(ss:
COUNTY OF SALT LAKE)

On this 5th day of November, 2003, personally appeared before me L. Kelly Shepard, being by me duly sworn and the said individual did say that he is the Declarant of Thanksgiving Village, one of the members of THANKSGIVING VILLAGE, L.C., a Utah limited liability company, and that the within and foregoing Declaration was signed in behalf of the said limited liability company pursuant to valid authority.

Pat T. Zoun
NOTARY PUBLIC
Residing at: Midvale, UT

My Commission Expires:
2-21-04



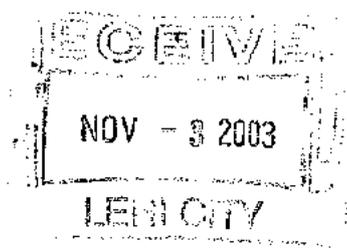


EXHIBIT "A"

[Description]

10/41

WHEN RECORDED MAIL TO:

Ralph Rasmussen
251 W. River Park Drive Suite 350
Provo, UT 84604

ENT 97759:2001 PG 1 of 41
RANDALL A. COVINGTON
UTAH COUNTY RECORDER
2001 Sep 26 3:49 pm FEE 101.00 BY SS
RECORDED FOR FIRST AMERICAN TITLE CO

**MASTER DECLARATION OF PROTECTIVE COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
BAK COMMERCIAL/RETAIL DEVELOPMENTS,
LEHI CITY, UTAH COUNTY, STATE OF UTAH**

THIS MASTER DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS FOR BAK BUSINESS, COMMERCIAL, AND RETAIL DEVELOPMENTS (hereinafter the "Declaration") is made this ___ day of _____, 2001, by AK HOLDING COMPANY, L.C., a Utah limited liability company, BUSH PROPERTIES, L.C., a Utah limited liability company, THANKSGIVING POINT DEVELOPMENT COMPANY, L.C., a Utah limited liability company, THANKSGIVING POINT BUILDING THREE, L.C., a Utah limited liability company, POINT DEVELOPMENT, L.C., a Utah limited liability company, and WHISTLE STOP DEVELOPMENT CORP., a Utah Corporation, (collectively hereinafter "Declarant").

RECITALS:

A. Declarant is the owners of fee simple title to that certain real property situated in Lehi City, Utah County, State of Utah, and more particularly described on Exhibit "A" attached hereto and by this reference made a part hereof (hereinafter the "Property"). This Declaration is being imposed by Declarant upon the Property.

B. Declarant desires to create within and upon the Property a high quality business, commercial, and retail complex in an attractive park-like setting. In order to do so, Declarant desires to establish master protective covenants, conditions and restrictions upon the Property and each and every portion thereof, which will constitute a general scheme for the improvement, development and management of said Property, and for the use, occupancy and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and enhancing the quality of the business environment within the Thanksgiving Point Development.

C. To provide efficient management for the developments on the Property and to preserve their value, desirability and attractiveness, Declarant has incorporated a Utah nonprofit corporation called BAK Commercial, and Retail Development Owners Association and Declarant has delegated and assigned to such Association the powers of managing BAK Commercial and Retail Development Owners Association, of maintaining and administering the Common Facilities, of administering and enforcing all covenants, conditions and restrictions, of collecting and disbursing funds pursuant to the assessments and charges hereinafter created and referred to and of performing such other acts as shall generally benefit the developments on the

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Property.

D. Declarant will hereafter hold and convey title to all of the Property subject to the protective covenants, conditions and restrictions hereinafter set forth.

NOW, THEREFORE, Declarant hereby covenants, agrees and declares that all of their interest as the same may from time to time appear in the Property shall be held and conveyed subject to the following covenants, conditions restrictions and easements which are hereby declared to be for the benefit of said interests in the Property, and the owners of said interests, their successors and assigns.

ARTICLE 1 DEFINITIONS

Unless the context clearly indicates otherwise, the following terms used in this Declaration are defined as follows:

1.1 "Architectural Committee" shall mean the committee provided for in Article 6 hereof.

1.2 "Articles" and "Bylaws" shall mean the Articles of Incorporation and Bylaws of the Association as the same may from time to time be duly amended. The Articles, among other things, establish the Board to manage the affairs of the Association. The Bylaws, among other things, set forth the number of persons constituting the Board, the method of the Board's selection, the Board's general powers, the method of calling a meeting of Members of the Association and the Members required to constitute a quorum for the transaction of business.

1.3 "Assessments" shall include each and all of the Assessments hereinafter defined:

(a) "Capital Improvement Assessment" shall mean a charge against each Owner and such Owner's Lot representing a portion of the cost to the Association for installation or construction of any capital improvements on any of the Common Facilities, which the Association may from time to time authorize pursuant to the provisions of this Declaration.

(b) "Reconstruction Assessment" shall mean a charge against each Owner and such Owner's Lot representing a portion of the cost to the Association for reconstruction of any portion or portions of the Common Facilities pursuant to the provisions of this Declaration.

(c) "Regular Assessment" shall mean a charge against each Owner and such Owner's Lot representing a portion of the cost to the Association for Common Expenses.

(d) "Special Assessment" shall mean a charge against a particular Owner and such Owner's Lot, directly attributable to the Owner, to reimburse the Association for costs incurred in bringing the Owner and such Owner's Lot into compliance with the

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provisions of this Declaration, the Articles, Bylaws, or Association Rules, or any other charge designated as a Special Assessment in this Declaration, the Articles, Bylaws or the Association Rules, together with attorney's fees and other charges payable by such Owner, pursuant to the provisions of this Declaration, plus interest thereon as provided for in this Declaration.

- 1.4 **"Association"** shall mean the BAK Commercial, and Retail Development Owners Association, a nonprofit corporation, incorporated under the laws of the State of Utah, and its successors and assigns.
- 1.5 **"Association Rules"** shall mean the rules adopted from time to time by the Association pursuant to Article 8 hereof.
- 1.6 **"Building"** shall mean any structure, which (a) is permanently affixed to the land, and (b) has one or more floors and a roof.
- 1.7 **"Board"** shall mean the Board of Trustees of the Association.
- 1.8 **"City"** shall mean the City of Lehi, Utah, a municipal corporation of the State of Utah.
- 1.9 **"Common Areas"** shall mean all parts of each Lot which are from time to time devoted primarily to parking, approaches, exits, entrances, sidewalks, exterior landscaping, incidental and interior roadways, service roads and other similar areas.
- 1.10 **"Common Expense"** shall mean the actual and estimated costs of:
- (a) maintenance, management, operation, repair, and replacement of the Common Facilities, and all other areas within the Property and outside of the Property which are maintained by the Association as provided in this Declaration or pursuant to agreement with the City, or any other city, or other governmental agency or authority;
 - (b) unpaid Special, Reconstruction and Capital Improvement Assessment;
 - (c) costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and employees;
 - (d) the costs of utilities, trash pickup and disposal, gardening and other services benefiting the Owners and their Lots to the extent services are paid by the Association;
 - (e) the costs of fire, casualty, liability, workmen's compensation and other insurance covering the Common Facilities;
 - (f) the costs of any other insurance obtained by the Association;
 - (g) reasonable reserves as deemed appropriate by the Board;

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- (h) the costs of bonding the members of the Board, any professional managing agent or any other person handling the funds of the Association;
- (i) taxes paid by the Association;
- (j) amounts paid by the Association for discharge of any lien or encumbrance levied against the Common Facilities or portions thereof;
- (k) Costs incurred by the Architectural Committee or other committees of the Association; and
- (l) the costs of any other item or items approved by the Board and incurred in connection with the Common Facilities, this Declaration, the Articles or the Bylaws, or in furtherance of the purposes of the Association or in the discharge of any obligations imposed on the Association by this Declaration

1.11 "Common Facilities" shall mean:

- (a) all real property and the improvements and fixtures thereto and the personal property thereon owned by or leased to the Association from time to time for the common use and benefit of the Owners, including, without limitation, streets, landscaped areas, parks, open spaces, paths, trails and slopes; and
- (b) all property rights, improvements, fixtures and personal property owned by or leased to the Association from time to time for the common use and benefit of the Owners and situated upon public property or the private property of the Owners, including, without limitation, all easements running in favor of the Association and the improvements, fixtures and personal property situated within or upon said easements, landscaping, irrigation systems and associated pumps and hardware, street lighting systems, project identification, directional and street signs, and street furniture.

The Common Facilities shall be designated in each final subdivision plat recorded by Declarant with regard to the Property and shall be conveyed by Declarant to the Association concurrently with the recording thereof. Declarant shall convey the Common Facilities to the Association free of all liens and encumbrances except current real property taxes (which taxes shall be prorated as of the date of the conveyance), title exceptions of record and the covenants, conditions, reservations, restrictions and easements contained in this Declaration.

1.12 "Declarant" shall mean AK Holding Company, L.C., a Utah limited liability company, Bush Properties, L.C., a Utah limited liability company, Thanksgiving Point Development Company, L.C., a Utah limited liability company, Thanksgiving Point Building Three, L.C., a Utah limited liability company, Point Development, L.C., a Utah limited liability company, and Whistle Stop Development Corp, a Utah Corporation. Additionally, for purposes of Article 2, Declarant shall also mean such other entities owned exclusively by Alan and/or Karen Ashton.

which were formed for the express purpose of owning real property within the Project.

1.13 "Design Guidelines" shall mean the guidelines prepared by Declarant setting forth certain architectural standards and specifications regarding the location and design of the Improvements, construction materials, lighting, landscaping, signage and other matters relating to Improvements on the Property. The Design Guidelines are incorporated in this Declaration by reference. Copies of the Design Guidelines are available at the office of the Association.

1.14 "Environmental Regulations" shall have the meaning set forth in Section 1.18 hereof.

1.15 "Exhibit" shall mean those documents so designated herein and attached hereto and each of such Exhibits is by this reference incorporated into this Declaration.

1.16 "Hazardous Condition" shall have the meaning set forth in Section 5.6(a) hereof.

1.17 "Hazardous Material" means (a) any waste, material or substance (whether in the form of a liquid, a solid or a gas and whether or not air-borne), which is deemed to be a pollutant or a contaminant, or to be hazardous, toxic, ignitable, reactive, corrosive, dangerous, harmful or injurious to public health or to the environment, and which is or may become regulated by or under the authority of any applicable local, state or federal laws, judgments, ordinances, orders, rules, regulations, codes or other governmental restrictions or requirements, any amendments or successor(s) thereto, replacements thereof or publications promulgated pursuant thereto (collectively "Environmental Regulations" and individually, an "Environmental Regulation"); (b) petroleum; (c) asbestos; (d) polychlorinated biphenyls; and (e) any radioactive material. In addition to the foregoing, the term "Environmental Regulations" shall be deemed to include, without limitation, local, state and federal laws, judgments, ordinances, orders, rules, regulations, codes and other government restrictions and requirements, any amendments and successors thereto, replacements thereof and publications promulgated pursuant thereto, which deal with or otherwise in any manner relate to, environmental matters of any kind.

1.18 "Improvements" shall mean any object, thing or activity of any kind installed, located or occurring on the Property which changes the external appearance of any portion of the Property, of any Lot or of any structure or thing affixed on the Property or any Lot, from its external appearance as it existed immediately prior to the installation, location or occurrence of the object, thing or activity. Improvements include, but are not limited to, all Buildings, structures, landscaping and lawns, exterior walkways, parking areas, drives and truck loading areas, signs, fences, poles, walls, utility lines, lighting, excavations, grading, berms, drainage facilities, repairs, alterations, painting and all other structures or objects of any type or kind installed or constructed on the Property.

1.19 "Institutional Mortgagee" shall mean a Mortgagee which is a bank, or savings and loan association or established mortgage company, or other entity chartered under federal or state laws, any corporation or insurance company, any federal or state agency, or any other institution specified by the Board.

1.20 "Lot" shall mean any lot or parcel shown on any recorded final subdivision plat filed by

the Owner of such lot or parcel to the extent such lots or parcels are part of the Property and shall also mean the entire balance of all real property which is from time to time subject to this Declaration, excluding, however, dedicated public rights-of-way and Common Facilities. If two or more contiguous Lots are held by the same Owner, such commonly owned Lots may, at the option Owner, be combined and treated as a single Lot for purposes of this Declaration, provided that the construction and location of Improvements thereon shall nevertheless be subject to the review and approval requirements set forth in this Declaration and each Lot shall nevertheless be subject to the specific use restriction more particularly set forth in Article 5. References in this Declaration to a specific Lot shall refer to the particular Lot as set forth in this Declaration and, as applicable, on the recorded final subdivision plat for such Lot.

1.21 "Member" shall mean every individual or entity that qualifies for membership in the Association pursuant to Article 2, including Declarant so long as Declarant qualifies for membership pursuant to said Article.

1.22 "Mortgage" shall mean any duly recorded mortgage or deed of trust encumbering a Lot.

1.23 "Mortgagee" shall mean the mortgagee or beneficiary under any Mortgage. A "First Mortgagee" shall refer to a Mortgagee whose Mortgage has priority over any other Mortgage encumbering a specific Lot.

1.24 "Occupant" shall mean and include the Declarant, the Owners, their respective heirs, successors and assigns (including Mortgagees) and any person who shall be from time to time entitled to the use and occupancy of space located within the Project under any lease, sublease, license or concession agreement, or other instrument or arrangement under which such rights are acquired.

1.25 "Owner" shall mean one or more persons or entities who are alone or collectively the record owner of fee simple title to a Lot, including Declarant, and the vendee under an installment land sales contract, but excluding those having such interest merely as security for the performance of an obligation.

1.26 "Permittees" shall mean all Occupants and all customers, employees, licensees and other business invitees of Occupants.

1.27 "Project" shall mean all of the Property, together with all of the Buildings and other Improvements constructed thereon.

1.28 "Property" shall mean the real property described on Exhibit "A" attached hereto and incorporated herein by this reference and, subsequent to the annexation thereof pursuant to this Declaration, any real property that shall become subject to this Declaration.

1.29 "Set Back" shall mean the distance from the property line of the Lot to the Building or Improvement that is subject to the Set Back requirement provided in this Declaration, the Design Guidelines for the Project, in any recorded final subdivision plat affecting the Project or in the City's Zoning Ordinance.

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1.30 "Supplementary Declaration" shall mean each of those certain supplementary declarations of protective covenants, conditions and restrictions, or similar instruments recorded subsequent to this Declaration, which annex portions of additional property.

ARTICLE 2
MEMBERSHIP IN THE ASSOCIATION

2.1 Membership. Every Owner shall be a Member of the Association subject to the terms of this Declaration, the Articles, Bylaws and Association Rules. The terms and provisions set forth in this Declaration, which are binding upon all Owners, are not exclusive, as Owners shall, in addition, be subject to the terms and provisions of the Articles and Bylaws of the Association to the extent the provisions thereof are not in conflict with this Declaration. Membership in the association shall be appurtenant to each Lot and may not be separated from the interest of an Owner in any Lot. Ownership of a Lot shall be the sole qualification for membership in the Association; provided, however, a Member's voting rights or privileges in the Common Facilities, or both, may be regulated or suspended as provided in this Declaration, the Bylaws or the Association Rules. Not more than one membership in the Association shall exist with respect to ownership of a single Lot.

2.2 Transfer. The membership held by any Owner shall not be transferred, pledged or alienated in any way, except upon the conveyance or encumbrance of such Lot and then only to the transferee or Mortgagee of such Lot. Any attempt to separate the membership in the Association from the Lot to which it is appurtenant shall be void and will not be reflected upon the books and records of the Association. In the event an Owner should fail or refuse to transfer the membership registered in such Owner's name to the transferee of such Owner's interest in such Lot, the Association shall have the right to record the transfer upon the books of the Association.

2.3 Voting Rights. All voting rights shall be subject to the restrictions and limitations provided herein and in the Articles, Bylaws and Association Rules.

2.4 Classes of Voting Membership. The Association shall have two (2) classes of voting membership:

- (a) Class A. Class A Members shall be all Owners with the exception of the Declarant. Class A Members shall be entitled to one (1) vote for each full acre of land plus a one-tenth (1/10) vote for each additional full one-tenth (1/10) acre of land in which they hold the interest required for membership. When more than one person owns a portion of the interest required for membership, each such person shall be a Member and the vote for such land shall be exercised as they among themselves determine, but in no event shall more votes be cast with respect to any such land than the number of votes that one person owning the entire interest required for membership would be entitled to cast with respect to such land. The Association shall not be required to recognize the vote or written assent of any such co-Owner except the vote or written consent of the co-Owner

designated in a writing executed by all of such co-Owners and delivered to the Association.

(b) Class B. The Class B Member shall be Declarant. The Class B Member shall be entitled to three (3) votes for each full acre of land plus three-tenths (3/10) votes for each additional full one-tenth (1/10) acre of land in which it holds the interest required for membership; provided that the Class B Membership shall cease and be converted to Class A Membership on the happening of either of the following events, whichever occurs earlier:

- (1) When the total votes outstanding in the Class A Membership equals or exceeds the total votes outstanding in the Class B Membership; or
- (2) December 31, 2015;

2.5 Approval of Members. In any matter requiring the consent of the Members, but not specifically provided for in this Declaration or the Articles, Bylaws, or any contract executed by the Association, a simple majority of the voting power of Members entitled to vote on such matter shall suffice.

ARTICLE 3 COVENANT FOR MAINTENANCE ASSESSMENTS

3.1 Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned by it, hereby covenants and agrees to pay, and each Owner of any Lot by acceptance of a deed or other conveyance creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association: Regular Assessments, Special Assessments, Capital Improvement Assessments and Reconstruction Assessments, such Assessments to be fixed, established and collected from time to time as hereinafter provided. The Assessments, together with interest thereon, late charges, attorneys' fees and court costs, and other costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made. Each such Assessment, together with such interest, late charges and costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Lot at the time when the Assessment fell due. The personal obligation shall not pass to the successors in title of an Owner unless expressly assumed by such successors.

3.2 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively to promote the comfort, health, safety, security and welfare of the Members and to perform the duties and exercise the powers of the Association enumerated in its Articles, Bylaws, and this Declaration.

3.3 Regular Assessments. The amount and timing of payment of Regular Assessments shall be determined by the Board pursuant to the Articles and Bylaws after giving due consideration to the current maintenance, operational, and other costs and the future needs of the Association. Not

later than thirty (30) days prior to the beginning of each fiscal year of the Association, the Board shall estimate the total Common Expenses to be incurred for the forthcoming fiscal year. The Board shall then determine the amount of the Regular Assessment to be paid by each Member. Written notice of the annual Regular Assessments shall be sent to every Member. Each Member shall thereafter pay to the Association such Member's Regular Assessment in installments as established by the Board. In the event the Board shall determine that the estimate of total charges for the current year is, or will become inadequate to meet all Common Expenses for any reason, it shall then immediately determine the approximate amount of such inadequacy and issue a supplemental estimate of the Common Expenses and determine the revised amount of Regular Assessment against each Member, and the date or dates when due.

3.4 Capital Improvement Assessments. In addition to the Regular Assessments, the Association may levy in any fiscal year, a Capital Improvement Assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or replacement of a described capital improvement upon the Common Facilities to the extent the same is not covered by the provisions affecting Reconstruction Assessments in Article 11 hereof, including the necessary fixtures and personal property related thereto. All amounts collected as Capital Improvement Assessments may only be used for capital improvements and shall be deposited by the Board in a separate bank account to be held in trust for such purposes. Said funds shall not be commingled with any other funds of the Association and shall be deemed a contribution to the capital account of the Association by the Members.

3.5 Rate of Assessment. All Regular, Reconstruction and Capital Improvement Assessments shall be fixed by the Board at a uniform rate for each full one-tenth of an acre of land within each Lot. All Regular, Reconstruction and Capital Improvement Assessments may be collected at intervals selected by the Board.

3.6 Certificate of Payment. The Association shall, upon demand, furnish to any Member liable for Assessments, a certificate in writing signed by an officer or authorized agent of the Association, setting forth whether the Assessments on a specified Lot have been paid, and the amount of delinquency, if any. A reasonable charge may be collected by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any Assessments therein stated to have been paid.

3.7 Exempt Property. The following portions of the Property shall be exempt from the Assessments created herein: (i) all properties dedicated to and accepted by, or otherwise acquired by a public authority; and (ii) the Common Facilities. However, no land or improvements devoted to business use shall be exempt from said Assessments.

3.8 Special Assessments. Special Assessments shall be levied by the Board against a Lot to reimburse the Association for costs incurred in bringing an Owner and such Owner's Lot into compliance with the provisions of this Declaration, the Articles, the Bylaws or Association Rules, or any other charges designated as a Special Assessment in this Declaration, the Articles, Bylaws or Association Rules, together with attorneys' fees, interest and other charges related thereto as provided in this Declaration. In the event the Association undertakes to provide materials or services which benefit individual Lots and which can be accepted or not by

individual Owners, such as tree trimming, such Owners in accepting such materials or services agree that the costs thereof shall be a Special Assessment.

3.9 Date of Commencement of Regular Assessments. The Regular Assessments shall commence as to all Lots within the Property on the first day of the month following the conveyance of the first Lot within the Property by Declarant to an Owner other than Declarant. In the event the amount budgeted to meet Common Expenses for any year proves to be excessive in light of the actual Common Expenses, the Board in its discretion may either reduce the amount of the Regular Assessment or may abate collection of Regular Assessments as it deems appropriate.

3.10 No Offsets. All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in this Declaration.

3.11 Reserves. The Regular Assessments shall include reasonable amounts as determined by the Board collected as reserves for the future periodic maintenance, repair or replacement of all or a portion of the Common Facilities. All amounts collected as reserves, whether pursuant to the preceding sentence of this Section or otherwise, shall be deposited by the Board in a separate bank account to be held in trust for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association. Such reserves shall be deemed a contribution to the capital account of the Association by the Members.

ARTICLE 4
NONPAYMENT OF ASSESSMENTS

4.1 Delinquency. Any Assessment provided for in this Declaration which is not paid when due shall be delinquent on said due date (the "delinquency date"). If any such Assessment is not paid within fifteen (15) days after the delinquency date, a late charge equal to five percent (5%) of the late payment shall be levied and the Assessment shall bear interest from the delinquency date, at the rate of eighteen percent (18%) per annum. To the fullest extent permitted by law, the Association may, at its option, and without waiving the right to foreclose its lien against the Lot, bring an action at law against the Member personally obligated to pay the same, and/or upon compliance with the notice provisions set forth in Section 4.2, to foreclose the lien against the Lot. If action is commenced, there shall be added to the amount of such Assessment the late charge, interest, the costs of preparing and filing the complaint in such action, and attorneys' fees incurred in connection with the commencement and prosecution of such action and in the event a judgment is obtained, such judgment shall include said late charge, interest and a reasonable attorney's fee, together with the costs of action. Each Member vests in the Association or its assigns, the right and power to bring all actions at law and/or for lien foreclosure against such Member or Members for the collection of such delinquent Assessments.

4.2 Notice of Lien. No action shall be brought to foreclose said Assessment lien or to proceed under the power of sale herein provided until thirty (30) days after the date a notice of claim of

lien is deposited in the United States mail, certified or registered, postage prepaid, to the Owner of said Lot, and a copy thereof is recorded by the Association in the office of the County Recorder of the County in which the Property is located. Said notice of claim of lien must recite a good and sufficient legal description of any such Lot, the record Owner or reputed Owner thereof, the amount claimed (which shall include interest on the unpaid Assessment at the rate of eighteen percent (18%) per annum, the late charge referred to in Section 4.1, plus reasonable attorneys' fees and expenses of collection in connection with the debt secured by said lien), and the name and address of the claimant.

4.3 Foreclosure Sale. Said Assessment lien may be enforced by sale by the Association, its attorney or any other person authorized to make the sale after failure of the Owner to make the payments specified in the notice of claim of lien within said thirty (30) day period. Any such sale provided for above is to be conducted in accordance with the provisions of the statutes of the State of Utah as said statutes may from time to time be amended, applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted or provided by law. The Association may appoint as the trustee to conduct said deed of trust sale, any person or entity qualified to act as a trustee under the Utah deed of trust statutes. The Association, through its duly authorized agents, shall have the power to bid on the Lot, using Association funds, or funds borrowed for such purpose, at the sale, and to acquire and hold, lease, mortgage and convey the same.

4.4 Curing of Default. Upon the timely payment, or other satisfaction, of (a) all delinquent Assessments specified in the notice of claim of lien, (b) all other Assessments which have become due and payable with respect to the Lot as to which such notice or claim of lien was recorded and (c) interest, late charges and attorneys' fees pursuant to this Declaration and the notice of claim of lien which have accrued, officers of the Association or any other persons designated by the Board are hereby authorized to file or record, as the case may be, an appropriate release of such notice, upon payment by the defaulting Owner of a fee, to be determined by the Association, to cover the costs of preparing and filing or recording such release.

4.5 Cumulative Remedies. The Assessment lien and the rights to foreclosure and sale there under shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid Assessments, as above provided.

ARTICLE 5 USE RESTRICTIONS

5.1 General Use Restrictions. Subject to the provisions of this Article 5, Lots within the Property shall only be used for those uses and categories of uses, from time to time permitted within the Area Plan approved by the City with respect to the Property.

5.2 Uses Specifically Prohibited. Notwithstanding anything to the contrary in Section 5.1, the enumerated uses specified above shall not be construed to include, either as a main or accessory

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use, and no Lot or part thereof shall be used for, any of the following uses.

- (a) Terminals, including truck or bus terminals, and other distribution facilities other than a commuter train facility providing passenger service between communities in the State of Utah.
- (b) Food processing operations, except as incidental to permitted restaurant and cafeteria operations.
- (c) Sand, gravel, and other extraction mining.
- (d) Manufacturing and assembly operations, except as otherwise provided.
- (e) Distillation, refining, smelting, agriculture or mining operations.
- (f) Fire sales, flea markets, pawn shops, businesses selling second hand goods, bankruptcy sales (unless pursuant to a court order), or auction operations.
- (g) Automobile, truck, trailer, or recreational vehicle or boat sales, leasing, storage, repair, or display.
- (h) Churches, synagogues, mosques or other places of worship.
- (i) Dry cleaning or laundry plants or facilities other than facilities used solely for the collection of soiled clothing and other fabrics from customers and distribution of clean clothing and other fabrics to customers.
- (j) Industrial or manufacturing uses.
- (k) Repair establishments other than establishments that repair jewelry as part of a jewelry store.
- (l) Junk or salvage yards.
- (m) Liquor stores.
- (n) Cabinet and carpenter shops.
- (o) Plumbing or sheet metal shops.
- (p) Petroleum processing or production.
- (q) Automobile body and fender repair work.
- (r) Night club, pool room, off-track betting facility, casino, card club, bingo parlor, or facility containing gaming equipment.

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(s) Establishments (including, without limitation, bookstores) engaged in the business of selling, exhibiting or delivering pornographic or obscene materials (except to the extent that such materials are commonly sold by quality bookstores such as B. Dalton, Barnes & Noble, Brentano's and Waldenbooks).

5.3 Generally Prohibited Uses. Notwithstanding any other provisions of this Declaration, no use or activity shall be established, maintained, conducted or permitted on any portion of the Property which will cause or result in any:

- (a) emission of smoke, fumes, odors, gases, vapors, steam, dust, sweepings, dirt, cinders or other particles or substances into the atmosphere which are detectable outside the boundaries of the Lot where created (except to the extent that such fumes or odors are incidental to the normal operation of an upscale restaurant) or which may be detrimental to the health, safety, welfare or comfort of any Owner of any other person, to the condition of any other portion of the Property, or to any vegetation within the Property;
- (b) discharge of fluids, gases, solid wastes or other harmful materials into any drainage canal or other waterway which may adversely affect the health, safety, welfare or comfort of any Owner or other person or the condition of any portion of the Property;
- (c) discharge of glare or heat, subsonic or ultrasonic sounds, or atomic, electromagnetic, microwave, ultra-violet, laser or other radiation which is detectable from any point exterior to the Lot upon which the operation is being conducted;
- (d) recurrent or continuous emission of sound or noise from any Lot which may be heard without instruments outside the boundaries of the Lot of origination;
- (e) recurrent or continuous ground vibrations perceptible without instruments at any point exterior to the Lot of origination;
- (f) physical hazard by reason of fire, radiation, explosion or other similar cause to either the Property or the surrounding area;
- (g) persisting unsightly condition on any Lot, which is visible from any street or any other portion of the Property;
- (h) excessive risk of fire or explosion that increases the casualty insurance premiums for improvements on adjacent Lots; or
- (i) violation of any applicable statute, ordinance, rule, regulation, permit or other validly imposed requirement of any governmental body.

5.4 Outside Storage. No materials, supplies, equipment, finished or unfinished products or articles of any kind shall be stored or permitted to remain on any portion of the Property outside of a Building.

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5.5 Waste Disposal. No trash, garbage or waste material, including, but not limited to, scraps, grass, shrub or tree clippings, lumber, metals and plant waste, shall be kept, stored or allowed to accumulate on any portion of the Property except in an approved bin or contained within an enclosed structure appropriately screened from view. All trash, garbage and other waste materials shall be regularly removed from each Lot and the Property. Incineration of trash, garbage or waste materials on the Property is prohibited.

5.6 Hazardous Materials.

(a) Restriction on Hazardous Materials. Any Hazardous Material brought upon, kept, used, generated, stored, treated, disposed of or released in or about the any Lot, or soils or groundwater of same, by any Owner, of such Lot, any Occupant or Permittee of such Owner, or any party acting on behalf of any of them and in a manner which does not comply with applicable Environmental Regulations shall be referred to herein as a "Hazardous Condition". In the event any Hazardous Condition occurs on a Lot, the Owner of such Lot shall promptly take all actions at its sole expense as are necessary to correct said violation to the satisfaction of the regulating entity.

(b) Indemnity: If an Owner of a Lot breaches the obligations stated in Section 5.6(a) above or if a Hazardous Condition exists at any time, then the Owner of such Lot shall indemnify, defend and hold the Association, the Owners of each other Lot within the Property and the members, partners, officers, directors, shareholders, employees, and agents of the Association and such other Members harmless from any and all claims, judgments, damages, penalties, fines, costs, expenses, liabilities or losses, including, without limitation, (1) diminution in value of the Property, (2) damages for the loss or restriction on use of rentable or usable space or of any amenity of the Property, (3) sums paid in settlement of, payment of, or in order to comply with any claims, suits, actions, judgments, proceedings, or investigations, (4) costs, expenses, reasonable attorneys' fees, consultant fees, expert fees and incidental costs incurred in connection with any of the above or any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any governmental or quasi-governmental entity. The obligations contained in this Article 5.6 shall survive the termination of this Declaration.

5.7 Storm Drainage. All storm drainage facilities on each Lot shall conform to the requirements of the master storm drainage system which Declarant has developed for the Property and to all applicable laws, ordinances and regulations of all governmental agencies and authorities having jurisdiction. Each Owner shall maintain, repair, replace and keep free of debris and obstruction all drainage systems and facilities located on such Owner's Lot. All parking, driveways and loading areas shall be paved and properly graded to assure proper drainage. The Architectural Committee may require, as part of the drainage plan for any Lot, that parking lots or other areas on a Lot be designed to provide storm water retention as provided in the Design Guidelines and the applicable laws, ordinances and regulations of all governmental agencies and authorities having jurisdiction.

5.8 Excavation. No excavation shall be made except in connection with the construction of

an Improvement, and upon completion thereof any exposed openings shall be backfilled and disturbed ground shall be graded, leveled and landscaped.

5.9 Solar Devices. Solar collectors and other solar energy devices are permitted. All exterior solar energy devices, including, but not limited to, solar panels, collectors and accessories, must be architecturally integrated into the building design, or, if free-standing, must be visually screened from both adjoining Lots and all streets by landscaping or other means acceptable to the Architectural Committee.

5.10 Utility Lines Underground. All utility lines, pipes and conduits within the Property shall be installed underground and no such utility lines, pipes or conduits or supporting apparatus shall be permitted above ground, except to the extent reasonably necessary to support such underground utilities.

5.11 Zoning Variances. No Owner of any Lot within the Property shall seek or obtain a zoning variance or a conditional use permit with regard to such Owner's Lot without the prior written approval of the Architectural Committee, nor shall any Owner request either a rezoning of any portion of the Property or an amendment to the Area Plan approved by the City with respect to the Property without the prior written approval of the Architectural Committee.

5.12 Planning Documents. No subdivision plat or replat of all or any portion of the Property may be submitted to any governmental authorities or recorded unless such plat or replat has first been approved in writing by the Architectural Committee. No request for rezoning and no preliminary or final project plan (as those terms are defined in the City's Zoning Ordinance) may be submitted to any governmental authorities for approval without the prior written approval of the Architectural Committee.

ARTICLE 6 ARCHITECTURAL CONTROL

6.1 Appointment of Architectural Committee. The Project shall have and at all times maintain an Architectural Committee composed of no less than three (3) or more than five (5) individuals who need not be Members. The Alan and/or Karen Ashton shall initially have the right to and do hereby appoint the following (3) individuals to the Architectural Committee: Tom Pugh, Boyd Poulton and Ralph Rasmussen. The Alan and/or Karen Ashton shall retain the right to appoint and remove, augment or replace the members of the Architectural Committee so long as they own at least two (2) acres of land in the Project; provided, however, that Alan and/or Karen Ashton may, at any time and at their sole option transfer this right to the Board by written notice thereof. At such time as Alan and/or Karen Ashton own less than two (2) acres of land within the Project, the right to appoint, remove, augment or replace members of the Architectural Committee shall automatically transfer to the Board.

6.2 Compliance with Design Guidelines. All Improvements, including, without limitation, all Improvements constituting Common Facilities, shall be constructed in strict compliance with the requirements of this Declaration and the Design Guidelines as they exist at the time of approval

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of plans, as hereinafter set forth. The Design Guidelines, which are incorporated by reference in this Declaration, are intended as positive statements of design philosophy to be applied throughout the Property. The Design Guidelines regulate, among other things, the following matters:

- (a) Architectural Design:
 - (1) Lot coverage;
 - (2) Material and colors;
 - (3) Identification signage;
 - (4) Exterior lighting; and
 - (5) Mechanical Equipment.

- (b) Site Accessories:
 - (1) Utilities;
 - (2) Street entrances;
 - (3) Parking lots and loading areas;
 - (4) Signage;
 - (5) Security fencing; and
 - (6) Outdoor furniture and furnishings.

- (c) Landscape Design
 - (1) Plant materials;
 - (2) Design principles; and
 - (3) Maintenance guidelines.

- (d) Storm Drainage:
 - (1) Master Plan; and
 - (2) Lot Drainage.

The Architectural Committee shall have the right to modify or supplement the Design Guidelines from time to time in a manner consistent with this Declaration and the overall development of the Property; provided, however, that no modification to the Design Guidelines may result in a provision that contradicts or conflicts with any express provision of this Declaration or is contrary to the general intent or purposes of this Declaration; and provided further, that once plans for an Improvement have been approved, subsequent changes in the Design Guidelines shall not affect such prior approval.

6.3 Approval of Plans Required. No Building or other Improvement shall be erected, placed, installed or permitted to occur or exist on any Lot, nor shall the exterior of any existing Improvements be altered, nor shall any construction be commenced on any Improvements, unless and until plans for such Building or other Improvements have been approved in writing by the Architectural Committee. All Building or Improvement plans submitted for approval are

subject to a mandatory forty-five (45) day waiting period beginning at the date of submittal to the Architectural Committee, and said plans shall receive a response from the Architectural Committee not more than sixty (60) days after the date of submittal to the Architectural Committee. The obligation to obtain the Architectural Committee's approval of plans is limited to external features of Buildings and other Improvements, and work which is completely within a Building may be undertaken without such approval. The replacement of minor features of Improvements with substantially identical material or the replacement of plants used in landscaping with comparable plants shall also not require the prior approval of the Architectural Committee. The Architectural Committee shall exercise its judgment to see that all Buildings and other Improvements, including, without limitation, landscaping, within the Property are consistent with this Declaration and the Design Guidelines. The actions of the Architectural Committee, through its written approval or disapproval of plans or other information, or with respect to any other matter, shall be conclusive and binding upon the Owner or other party who submitted the plans or other information for approval. The Architectural Committee shall approve all proposed improvements that comply with the applicable Design Guidelines and this Declaration. All Improvements shall be constructed in accordance with the plans approved by the Architectural Committee.

6.4 Changes in Plans. No material change in any plans or other document required to be approved by the Architectural Committee shall be made unless and until the proposed change is submitted to and approved by the Architectural Committee.

6.5 Submittal and Approval Procedures. An Owner or the Owner's representative shall submit materials as required by the Design Guidelines in connection with the consideration of any plans, submittals or applications for approval of Improvements and shall pay such reasonable architectural review fees as may be established from time to time by the Architectural Committee in the design Guidelines or otherwise. The Architectural Committee's approval or disapproval of submitted plans shall be within the reasonable discretion of the Architectural Committee, but shall be based upon compliance with this Declaration, the factors set forth in the Design Guidelines and the harmony and compatibility of the submitted plans with other Improvements existing or contemplated within the Property. The Architectural Committee shall not arbitrarily withhold any approval. The Architectural Committee's approval of plans shall be evidenced only by the signature of the Architectural Committee upon the plans so approved or by other written instruments signed by the Architectural Committee. The Architectural Committee may approve or disapprove any submittal, or grant approval subject to specified conditions. The Architectural Committee shall, within the time periods provided for in the Design Guidelines, deliver written notice to the party seeking the approval stating that the approval is granted; that approval is granted subject to conditions and specifying the conditions, which must be consistent with this Declaration and the Design Guidelines; or that approval is denied and specifying the reasons for disapproval. Upon disapproval, the party seeking approval may then modify and resubmit the necessary documents for approval. If the Architectural Committee fails either to approve or disapprove submitted documents, whether an initial submittal or resubmittal, within the time periods provided by the Design Guidelines, the Architectural Committee shall be conclusively deemed to have approved such documents; provided, however, that the lack of express approval shall not waive any requirement of this Declaration or the Design Guidelines.

6.6 Construction of Improvements. Upon receipt of approval of plans from the Architectural Committee, the Owner to whom approval is given shall, as soon as reasonably practicable, satisfy all conditions thereof and diligently proceed with the commencement and completion of construction or alteration of all approved Improvements. Unless the work is commenced within six (6) months from the date of such approval or the Owner applies for and obtains an extension of such time period from the Architectural Committee prior to the expiration of such time period, such approval shall automatically be revoked. For purposes of this Declaration, construction shall be deemed to have commenced on a Building if a building permit has been obtained and a foundation has been poured for the Building. For any other Improvement, construction shall be deemed to have commenced if required building permits have been obtained and any visible work on the Improvements in question has been started. Except to the extent that non-material modifications are made to such plans, all Improvements shall conform to the plans for such Improvements previously approved by the Architectural Committee. After commencement of construction of any Improvement, the Owner shall diligently pursue the work thereon until completion, subject to reasonable delays for weather, fire, flood, strikes, acts of God and other causes beyond the Owner's control. The Board shall hereby hold and retain the right to request and obtain an injunction for those who are in violation of what the Architectural Committee has agreed. All costs, including attorney fees, associated with an injunction shall be the responsibility of the Owner.

6.7 Installation of Landscaping. All landscaping for a Lot shall be installed, according to the approved plans, as soon as reasonably practicable following substantial completion of the primary Building on the Lot, and in all events within not more than six (6) months following such substantial completion.

6.8 No Engineering Approval. Plans are not approved for engineering design, and by approving such plans neither the Architectural Committee, the members thereof, the Association, the Members, the Board nor Declarant assumes liability or responsibility therefore, or for any defect in any structure constructed from such plans.

6.9 Waiver or Variance of Restrictions. To encourage good design, innovation and flexibility, the Architectural Committee may waive or grant a variance of any of the requirements or restrictions contained in the Design Guidelines; in this Article with respect to any Lot, if, in the sole judgment of the Architectural Committee, such waiver or variance would be consistent with the general intent and purposes of this Declaration and would not adversely affect any other Lot or the Property as a whole. Subject always to the provisions of the foregoing sentence, variances may be approved, among other reasons, to correct errors in surveying of lot lines or unintentional mislocation of improvements on a Lot, or where the application of any of the provisions of this Declaration or the Design Guidelines to a particular Lot or any portion thereof would, by reason of unusual circumstances or surroundings, result in undue hardship. Any Owner desiring a waiver or variance shall submit a written request to the Architectural Committee and shall provide all other information and material requested by the Architectural Committee. A waiver or variance may be granted only with the consent of the Architectural Committee and must be evidenced by a written instrument signed by the Architectural Committee. If the Architectural Committee fails to approve or disapprove in writing any request for a waiver or variance within thirty (30) days after receiving all requested information relating to the waiver or variance, the

requested waiver or variances, shall be deemed denied.

ARTICLE 7
GENERAL CONSTRUCTION REOUIREMENTS

7.1 **Construction of Improvements on Each Lot.** All work performed in the construction, maintenance, repair replacement, alteration or expansion of any Improvement on a Lot shall be effected as expeditiously as possible and in such a manner as not to unreasonably interfere, obstruct or delay (a) access to or from any other Lot, or part thereof, to or from any of the Common Facilities, (b) construction work being performed on any other Lot; or (c) the use, enjoyment or occupancy of any other Lot by any Owner, Occupant or Permittee of that Lot. All work performed in the construction, maintenance, repair, replacement, alteration or expansion of any Improvement on a Lot shall be in compliance with all applicable laws, rules, regulations, orders and ordinances of the city, county, state and federal government, or any department or agency thereof; and no such work shall cause any Improvement located on any other Lot to be in violation of any such laws, rules, regulations, orders or ordinances. All work performed in the construction, maintenance, repair, replacement, alteration or expansion of any Improvement on a Lot shall be done in a good and workmanlike manner and in accordance with good engineering standards.

7.2 **Staging of Construction of Improvements.** Staging for the construction, maintenance, repair, replacement, alteration or expansion of any Improvement on a Lot, including, without limitation, the location of any temporary buildings or construction sheds, the storage of building materials, and the parking of construction vehicles and equipment, shall be limited to such Lot.

ARTICLE 8
DUTIES AND POWERS OF THE ASSOCIATION

8.1 **General Duties and Powers of the Association.** In addition to the duties and powers enumerated in its Articles and Bylaws, or elsewhere provided for herein, and without limiting the generality thereof; the Association shall:

(a) enforce the provisions of this Declaration, the Articles and the Bylaws by appropriate means and carry out the obligations of the Association hereunder, including without limitation, the expenditure of funds of the Association, the employment of legal counsel, the commencement of actions, the promulgation of the Association Rules as provided in the Bylaws and Section 8.2 below, which shall include the establishment of a system of fines or penalties enforceable as Special Assessments;

(b) acquire, maintain and otherwise manage all of the Common Facilities and all facilities, improvements and landscaping thereof, and all personal property acquired by the Association, and maintain all other areas within and in the vicinity of the Property which the Association deems appropriate to maintain or is obligated to maintain;

- (c) pay any real and personal property taxes and other charges assessed against the Common Facilities unless the same are separately assessed to the Owners;
- (d) obtain, for the benefit of the Common Facilities, all water, gas and electric, refuse collections and other services;
- (e) grant easements where necessary for utilities and sewer facilities over the Common Facilities to serve the Property as provided in Article 13 below;
- (f) contract for and maintain such policy or policies of insurance as may be required by this Declaration or as the Board deems necessary or desirable in furthering the purposes of and protecting the interest of the Association and its Members;
- (g) delegate its powers to committees, officers, or employees as provided in the Bylaws, employ a manager or other persons and contract with independent contractors or managing agents who have professional experience in the management of condominium developments or planned unit developments to perform all or any part of the duties and responsibilities of the Association;
- (h) establish and maintain a working capital and contingency fund in an amount to be determined by the Board;
- (i) subject to the rights of the Declarant, have the duty to maintain architectural control over the property and appoint the Architectural Committee in connection therewith, pursuant to Article 6 hereof;
- (j) have the power of entry upon any Lot where necessary in connection with construction, maintenance or repair for the benefit of the Common Facilities, or the Owners;
- (k) at its sole discretion, provide trash pickup and disposal and snowplowing service for the benefit of the Owners and their Lots;
- (l) acquire real property by lease or purchase for offices or other facilities that may be necessary or convenient for the management of the Common Facilities, the administration of the affairs of the Association or for the benefit of the Members;
- (m) at its sole discretion, contract for cable television service for the benefit of the Owners who have subscribed for the service; and
- (n) have the power to establish in cooperation with the City a special tax assessment district for the performance of all or a portion of the maintenance and other functions now within the responsibility of the Association, together with the right to convey or lease, with or without the payment of monetary consideration, all or any portion of the Common Facilities to said district.

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8.2 Association Rules. The Board shall also have the power pursuant to the procedures set forth in the Bylaws to adopt, amend, and repeal such rules and regulations it deems reasonable (the "Association Rules"). The Association Rules shall govern such matters in furtherance of the purposes of the Association, including, without limitation, the use of the Common Facilities; provided, however, that the Association Rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the Association Rules as they may from time to time be adopted, amended or repealed, shall be delivered to each Owner in the same manner established in this Declaration for the delivering of notices. Upon such delivery, said Association Rules shall have the same force and effect as if they were set forth in and were part of this Declaration. The Association Rules, as adopted, amended or repealed, shall be available at the principal office of the Association to each Owner and Mortgagee upon request. In the event of any conflict between any such Association Rules and any other provisions of this Declaration, the Articles or the Bylaws, the provisions of the Association Rules shall be deemed to be superseded by the provisions of this Declaration, the Articles or the Bylaws to the extent of any such inconsistency.

8.3 Delegation of Powers. The Association shall have the right according to law, to delegate any of its powers under this Declaration, the Articles and Bylaws, provided, however, no such delegation, whether to a professional management company, the Architectural Committee or otherwise shall relieve the Association of its obligation to perform such delegated duty.

ARTICLE 9 REPAIR AND MAINTENANCE

9.1 Repair and Maintenance by Association. Without limiting the generality of the statement of duties and powers contained in this Declaration, the Association shall have the duty to accomplish the following upon the Lots, Common Facilities or other land within and about the Project in such manner and at such times as the Board shall prescribe:

- (a) maintain the Common Facilities in a clean, safe, attractive, and first-class condition at all times, and maintain all other areas within and in the vicinity of the Property which the Association deems appropriate to maintain or is obligated to maintain in a clean, safe, attractive, and first-class condition at all times;
- (b) repair, restore, replace and make necessary improvements to the Common Facilities;
- (c) maintain all drainage facilities and easements which constitute Common Facilities in accordance with the requirements of any applicable flood control district;
- (d) cause the appropriate public utility to maintain any utility easements located within the Common Facilities;
- (e) maintain all other areas, facilities, equipment, services or aesthetic components of

whatsoever nature as may from time to time be requested by the vote of Members holding not less than sixty-six and two-thirds percent (66-2/3%) of the voting power of the Members.

9.2 Repair and Maintenance by Owner. Every Owner shall:

(a) maintain such Owner's Lot and all Improvements located therein in a clean, safe, attractive and first-class condition at all times; and

(b) repair any structural or visible defects or damages to Improvements, keep the exterior of Buildings and other structures on such Owner's Lot in good clean, safe, attractive, and first-class condition and painted as required, keep such Owner's Lot free from weeds, trash and debris, and keep all signs and lighting clean and functional.

9.3 Standards for Maintenance and Construction.

(a) Maintenance of the exterior of Buildings and Improvements shall be accomplished in accordance with the Design Guidelines and, if required by the Design Guidelines, only after approval of the Architectural Committee; and

(b) Throughout the period of construction upon a Lot, the Owner of such Lot shall keep the Lot and all streets used by construction equipment or trucks in clean and safe condition, shall remove daily all trash, rubbish, debris, mud and dirt there from, shall take all measures necessary or appropriate to control dust, blowing sand and erosion, whether by wind or water, on the Lot and shall so conduct all such construction so as not to interfere with free and ready access to existing Buildings and neighboring Lots.

9.4 Right of Association to Maintain and Install. In the event any Owner fails to maintain the exterior of such Owner's Building or Lot or the Improvements thereon, or to install and thereafter maintain landscaping on such Lot in accordance with Section 6.7 hereof, the Association may cause such maintenance and installation to be accomplished as hereinafter set forth.

(a) Upon finding by the Board of a deficiency in such maintenance or installation, the Board shall give notice of deficiency to the responsible Owner which shall briefly describe the deficiency and set a date for hearing before the Board or a committee selected by the Board for such purpose. The Board may delegate its power under this Section 9.4(a) to a duly appointed committee of the Association.

(b) Such hearing shall be held not less than ten (10) or more than thirty (30) days from the date of said notice.

(c) Such hearing shall be conducted according to such reasonable rules and procedures as the Board shall adopt and which shall provide the Owner with the right to present oral and written evidence and to confront and cross-examine adverse witnesses. If the Board or any such committee renders a decision against the responsible Owner, it

shall further set a date by which the deficiency is to be corrected by the responsible Owner. A decision of such committee may be appealed to the Board, but a decision of the Board shall be final.

(d) If the deficiency continues to exist after the time limitation imposed by a final decision of the Board or any such committee, the Board or such committee may cause such maintenance or installation to be accomplished.

(e) In the event the Board or such committee elects to cause such maintenance or installation to be accomplished, the following shall apply:

(1) The responsible Owner shall have no more than ten (10) days following the receipt of written notice of such election from the Board or such committee to select a day or days upon which such maintenance or installation work shall be accomplished

(2) The date which said, Owner selects shall be not less than fifteen (15) days nor more than forty-five (45) days following the last day of said ten (10) day period;

(3) If said Owner does not select such day or days within said ten (10) day period, the Board or such committee may select a day or days upon which such work may be accomplished which shall be not less than twenty-five (25) nor more than fifty-five (55) days from the last day of said ten (10) day period; and

(4) Unless the Owner and the Board otherwise agree, such maintenance or installation shall take place only during daylight hours on any day, Monday through Friday, excluding holidays.

(f) If the Association pays for all or any portion of such maintenance or installation, such amount shall be a Special Assessment to the affected Owner and Lot.

ARTICLE 10
INSURANCE

10.1 Types. The Association, to the extent available, shall obtain and continue in effect in its own name the following types of insurance:

(a) A comprehensive policy of public liability insurance covering the Common Facilities with a limit of not less than Two Million Dollars (\$2,000,000) for claims for personal injury and/or property damage arising out of a single occurrence, such coverage to include protection against water damage liability, liability for non-owned and hired automobiles and liability for property of others, and such other risks as shall customarily be covered with respect to similar planned unit developments in the area of the Property, shall specifically name Declarant as an "additional insured," and shall contain a

“severability of interest” endorsement or the equivalent which shall preclude the insurer from denying the claim of an Owner because of negligent acts or omissions of the Association or other Owners;

(b) A policy of fire and casualty insurance with extended coverage for the full replacement value of the Common Facilities (including all building service equipment and the like), without deduction for depreciation, with an “agreed amount endorsement” or its equivalent and clauses waiving subrogation against Declarant, Members and the Association and persons upon the Property with the permission of a Member, such insurance to afford protection against at least loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, water damage, and such other risks as shall customarily be covered with respect to similar planned unit developments in the area of the Property.

(c) Fidelity coverage against dishonest acts on the part of directors, officers, employees or volunteers who handle or who are responsible to handle the funds of The Association, and such fidelity bonds shall name the Association as obligee, shall be written in an amount equal to one hundred fifty percent (150%) of the estimated annual operating expenses of the Association, including reserves, and shall contain waivers of any defense based on the exclusion of persons who serve without compensation or from any definition of “employee” or similar expression.

10.2 Waiver By Members. As to each of said policies which will not be voided or impaired thereby, the Members hereby waive and release all claims against the Association, the Board, the Declarant and agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but to the extent of insurance proceeds received in compensation for such loss only.

10.3 Other Insurance: Annual Review. The Association may purchase such other insurance as it may deem necessary, including, but not limited to, plate-glass insurance, workmen’s compensation, officers’ and directors’ liability, and errors and omission insurance. The Board shall annually determine whether the amounts and types of insurance it has obtained provide adequate coverage for the Common Facilities in light of increased construction costs, inflation, practice in the area in which the Property is located, or any other factor which tends to indicate that either additional insurance policies or increased coverage under existing policies are necessary or desirable to protect the interests of the Association. If the Board determines that increased coverage or additional insurance is appropriate, it shall obtain the same.

10.4 Premiums and Proceeds. Insurance premiums for any such blanket insurance coverage obtained by the Association and any other insurance deemed necessary by the Association shall be a Common Expense to be included in the Regular Assessments levied by the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried, or otherwise disposed of as provided in Article 11 hereof. The Association is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers.

ARTICLE 11
DESTRUCTION OF IMPROVEMENTS

In the event of partial or total destruction of Improvements upon the Common Facilities, it shall be the duty of the Association to restore and repair the same to its former condition as promptly as practical. The proceeds of any insurance maintained pursuant hereto shall be used for such purpose. In the event that the amount available from the proceeds of such insurance policies for such restoration and repair shall be insufficient to accomplish such repair or restoration, a Reconstruction Assessment may be levied by the Association to provide the necessary funds for such reconstruction, over and above the amount of any insurance proceeds available for such purpose. In the event any excess insurance proceeds remain, the Board, shall distribute pro rata such excess funds to the Members, subject to the prior rights of Mortgagees whose interest may be protected by insurance policies carried by the Association. The rights of an Owner and the Mortgagee of such Owner's Lot as to such pro rata distribution shall be governed by the provisions of the Mortgage encumbering such Lot. All amounts collected as Reconstruction Assessments shall only be used for the purposes set forth in this Article and shall be deposited by the Board in a separate bank account to be held in trust for such purposes. Such funds shall not be commingled with any other funds of the Association and shall be deemed a contribution to the capital account of the Association by the Members.

ARTICLE 12
EMINENT DOMAIN

The term "taking" as used in this Article shall mean condemnation by eminent domain or sale under threat of condemnation. In the event of a threatened taking of all or any portion of the Common Facilities, the Members hereby appoint the Board and such persons as the Board may delegate to represent all of the Members in connection with the taking. The board shall act in its sole discretion with respect to any awards being made in connection with the taking and shall be entitled to make a voluntary sale to the condemn or in lieu of engaging in a condemnation action. Any awards received on account of the taking shall be paid to the Association. In the event of a taking of less than all of the Common Facilities, the rules as to restoration and replacement of the Common Facilities and the improvements thereon shall apply as in the case of destruction of improvements upon the Common Facilities. In the event of a total taking, the Board shall distribute pro rata any award to the Members. The rights of an Owner and the Mortgagee of such Owner's Lot as to such pro rata distribution shall be governed by the provisions of the Mortgage encumbering such Lot.

ARTICLE 13
RIGHTS TO THE COMMON FACILITIES

13.1 **Members' Right of Enjoyment.** There is hereby reserved and established for the benefit of each Owner and such Owner's Occupants and Permittees a nonexclusive easement for use and enjoyment in and to the Common Facilities, and such right shall be appurtenant to and shall pass with the interest required to be an Owner to every Lot, subject to the following provisions:

- (a) The right of the Association to establish reasonable rules and regulations pertaining to the use of the Common Facilities.
- (b) The right of the Association subject to the approval rights of Mortgagees pursuant to Article 16 hereof, to dedicate or transfer all or any part of the Common Facilities to any public agency, authority or utility or other entity for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer, including, without limitation, the conveyance, lease or other transfer of any portion of the Common Facilities to a special tax assessment district or to the City, shall be effective unless approved by Members holding not less than sixty-six and two-thirds percent (66-2/3%) of the voting power of the Members.
- (c) The right of the Association to establish, in cooperation with the City, a special assessment district for the performance of all or a portion of the maintenance and other functions now within the responsibility of the Association, together with the right of the Association to convey, lease or otherwise transfer, subject to the provisions of subsection 13.1(b) above, all or any portion of the Common Facilities to said district.

13.2 Waiver of Use. No Member may exempt such Member from personal liability for Assessments duly levied by the Association, nor release the Lot owned by such Member from the liens and charges hereof, by waiver of the use and enjoyment of the Common Facilities, or the abandonment of such Member's Lot.

ARTICLE 14 EASEMENTS

14.1 Owners' Rights and Duties: Utilities and Cable Television. The rights and duties of the Owners with respect to water, sewer, electricity, gas, telephone, cable television lines and drainage facilities shall be governed by the following:

- (a) Wherever sanitary sewer, water, electricity, gas, telephone and cable television lines or drainage facilities are installed within the Property, there is hereby reserved and established for the benefit of the Owners of any Lot served by said lines or facilities a nonexclusive easement to the full extent necessary therefore, to enter upon the Lots owned by others, or to have utility companies enter upon the Lots owned by others, in or upon which said lines or facilities, or any portion thereof lie, to repair, replace and generally maintain said lines and facilities as and when the same may be necessary as set forth below, provided that such Owner or utility company shall promptly repair any damage to a Lot caused by such entry as promptly as possible after completion of work thereon.
- (b) Wherever sanitary sewer, water, electricity, gas, telephone or cable television lines or drainage facilities are installed within the Property, which lines or facilities serve more than one (1) Lot, the Owner, of each Lot served by said lines or facilities shall be

entitled to the full use and enjoyment of such portions of said lines or facilities which service such Owner's Lot.

(c) The foregoing provisions of this Section shall not be deemed to give any Owner the right to connect to any utility line or facility without first complying with all the requirements of the utility company providing the service in question, including without limitation, the payment of all required connection fees and related charges.

14.2 Utilities. Easements over the Property for the installation and maintenance of electric, telephone, cable television, water, gas, sanitary sewer lines and drainage facilities as shown on the recorded subdivision maps of the Property are hereby reserved and established for the benefit of each Owner and their respective successors and assigns.

14.3 Common Area Easements. The following nonexclusive easements are hereby reserved and established for the benefit of each Owner, and the Occupants and Permittees of each Owner:

(a) Nonexclusive easements over, upon, across and between each Lot for the purpose of pedestrian traffic between each Lot and (1) each other Lot which is contiguous thereto; (2) the public streets and alleys now or hereafter abutting or located on any portion of the Property; (3) the Common Facilities; (4) the parking areas now and hereafter located on each Lot; and (5) over and across the Common Areas located on each Lot; limited, however, to those portions of each Lot which are improved by the Owner thereof from time to time pedestrian walkways and made available by such Owner for general use, as such portions may be reduced, increased or relocated from time to time by each such Owner.

(b) Nonexclusive easements for the purpose of vehicular traffic over, upon, across and between each Lot and (1) the public streets and alleys now and hereafter abutting any portion of the Property; and (2) the Common Facilities; limited, however, to those portions of the Property which are improved by the Owner thereof from time to time for vehicular access ways as such portions may be relocated from time to time by such Owner.

(c) Nonexclusive easements over, upon, across and between the access points and driving lanes from time to time established on each Lot for the purpose of providing ingress, egress, and access to (1) the easements hereby created; (2) the public streets and alleys now and hereafter abutting any portion of the Property; and (3) the Common Facilities.

(d) Nonexclusive easements in and to the parking areas from time to time located on each Lot for access to and use for vehicular parking purposes.

14.3.1

14.3.2

14.3.3

ARTICLE 15
NATURE OF EASEMENTS AND RIGHTS GRANTED

15.1 **Easements Appurtenant.** Each and all of the easements and rights granted or created herein are appurtenances to the affected portions of the Property and none of the easements and rights may be transferred, assigned or encumbered except as an appurtenance to such portions. For the purposes of such easements and rights, the particular areas of the Property which are benefited by such easements shall constitute the dominate estate, and the particular areas of the Property which are burdened by such easements and rights shall constitute the servient estate.

15.2 **Nature and Effect of Easements.** Each and all of the easements, covenants, restrictions and provisions contained in this Declaration:

- (a) Are made for the direct, mutual and reciprocal benefit of the Owners, Occupants and Permittees of the respective Lots;
- (b) Create mutual equitable servitudes upon each Lot in favor of the other Lots;
- (c) Constitute covenants running with the land; and
- (d) Shall bind every person or entity having any fee, leasehold or other interest in any portion of the Property at any time or from time to time to the extent that such portion is affected or bound by the easement, covenant, restriction or provision in question, or to the extent that such easement, covenant, restriction or provision is to be performed on such portion.

ARTICLE 16
RIGHTS OF LENDERS

16.1 **Filing Notice: Notices and Approvals.** A Mortgagee shall not be entitled to receive any notice which this Declaration requires the Association to deliver to Mortgagees unless and until such Mortgagee, or its mortgage servicing contractor, has delivered to the Board a written notice stating that such Mortgagee is the holder of a Mortgage encumbering a Lot within the Property. Such notice need not state which Lot or Lots are encumbered by such Mortgage, but shall state whether such mortgagee is a First Mortgagee. Wherever the approval of all or a specified percentage of Mortgagees is required pursuant to this Declaration, it shall be deemed to mean the vote or approval of all or a specified percentage only of those Mortgagees which have delivered such notice to the Board. Notwithstanding the foregoing, if any right of a Mortgagee under this Declaration is conditioned on a specific written request to the Association, in addition to having delivered the notice provided in this Section, a Mortgagee must also make such request, either in a separate writing delivered to the Association or in the notice provided above in this Section, in order to be entitled to such right. Except as provided in this Section, a Mortgagee's rights pursuant to this Declaration, including, without limitation, the priority of the lien of Mortgages over the lien of Assessments levied by the Association hereunder shall not be affected by the

failure to deliver a notice to the Board. Any notice or request delivered to the Board by a Mortgagee shall remain effective without any further action by such Mortgagee for so long as the facts set forth in such notice or request remain unchanged.

16.2 Priority of Mortgage Lien. No breach of the covenants, conditions or restrictions herein contained, nor the enforcement of any lien provisions herein, shall affect, impair, defeat or render invalid the lien or charge of any Mortgage made in good faith and for value encumbering any Lot, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise, with respect to a Lot, except as otherwise provided in this Article.

16.3 Curing Defaults. A Mortgagee or the immediate transferee of such Mortgagee, who acquires title by judicial foreclosure, deed in lieu of foreclosure or trustee's sale, shall not be obligated to cure any breach of the provisions of this Declaration which occurred before such Mortgagee or transferee acquired title if (a) such breach is noncurable or of a type which is not practical or feasible to cure, and (b) such Mortgagee did not have notice of such breach at the time Mortgagee acquired its lien or security interest in the Lot or Lots. The determination of the Board made in good faith as to whether a breach is noncurable or not feasible to cure shall be final and binding on all Mortgagees.

16.4 Relationship With Assessments Liens.

(a) The lien provided for in Article 4 hereof for the payment of Assessments shall be subordinate to the lien of any Mortgage which is recorded prior to the date any such Assessment becomes due.

(b) If any Lot subject to a monetary lien created by any provision hereof shall be subject to the lien of a Mortgage: (1) the foreclosure of any lien created by anything set forth in this Declaration shall not operate to affect or impair the lien of such Mortgage; and (2) the foreclosure of the lien of said Mortgage, the acceptance of a deed in lieu of foreclosure of the Mortgage or sale under a power of sale included in such Mortgage (such events being hereinafter referred to as "Events of Foreclosure") shall not operate to affect or impair the lien hereof, except that any persons who obtain an interest through any of the Events of Foreclosure, and their successors in interest, shall take title free of the lien hereof or any personal obligation for said charges as shall have accrued up to the time of any of the Events of Foreclosure, but subject to the lien hereof for all said charges that shall accrue subsequent to the Events of Foreclosure.

(c) Any Mortgagee who obtains title to a Lot by reason of any of the Events of Foreclosure, or any purchaser at a private or judicial foreclosure sale, shall take title to such Lot free of any lien or claim. The unpaid Assessments against such Lot which accrue prior to the time such Mortgagee or purchaser takes title to the Lot, except for liens or claims for a share of such Assessments resulting from a reallocation of such Assessments to all Lots within the Property.

(d) Nothing in this Section shall be construed to release any Owner from such Owner's obligation to pay for any Assessment levied pursuant to this Declaration.

16.5 One Hundred Percent Vote of Institutional Mortgagees. Except upon the prior written approval of at least one hundred percent (100%) of Institutional Mortgagees:

(a) Dissolve the Association or abandon or terminate the maintenance of the Common Facilities by the Association; or

(b) Amend a material provision of this Declaration, the Bylaws or the Articles, and without limiting the generality of the foregoing, the provisions of this Article or any other rights granted specifically to the Mortgagees pursuant to any other provision of this Declaration; or

(c) Abandon, partition, sell, alienate, subdivide, release, transfer, hypothecate or otherwise encumber the Common Facilities; provided, however, the granting of easements for public utilities or other public purposes consistent with the intended use of the Common Facilities shall not require such approval.

16.6 Other Rights of Institutional Mortgagees. Any Institutional Mortgagee, or its mortgage servicing contractor, shall, upon written request to the Association, be entitled to:

(a) Inspect the books and records of the Association during normal business hours; and

(b) Receive the annual audited financial statement of the Association ninety (90) days following the end of the Association's fiscal year; and

(c) Receive written notice of all annual and special meetings of the Members or of the Board, and Institutional Mortgagees shall further be entitled to designate a representative to attend all such meetings in order to, among other things, draw attention to violations of this Declaration which have not been corrected or made the subject of remedial action by the Association; provided, however, nothing contained in this Section shall give an Institutional Mortgagee the right to call a meeting of the Board or of the Members for any purpose or to vote at any such meeting; and

(d) Receive written notification from the Association of any default in the performance of the obligations imposed by this Declaration by the Owner whose Lot is encumbered by such Institutional Mortgage, which default has not been cured within sixty (60) days of a request therefore by the Association; provided, however, the Association shall only be obligated to provide such notice to Institutional Mortgagees whose written request therefore to the Association specifies the Lot or Lots to which such request relates.

16.7 Conflicts. In the event of any conflict between any of the provisions of this Article and any of the other provisions of this Declaration, the provisions of this Article shall control.

16.8 Voting Rights of Institutional Mortgagees. In the event of a default by the Owner of any Lot in any payment due under the terms of any Institutional Mortgage or the promissory note secured thereby, the Institutional Mortgagee or such Institutional Mortgagee's representative shall have the right, upon giving written notice to such defaulting Owner and the Association and placing of record a notice of default, to exercise the voting rights of such defaulting Owner attributable to such Lot at any regular or special meeting of the Members held during such time as such default may continue. Any such Owner's voting rights shall be restored to him at such time as such default is cured.

16.9 Notice of Destruction or Taking. In the event that any Common Facilities, or any portion thereof, is substantially damaged or is made the subject of any condemnation proceeding in eminent domain or is otherwise sought to be acquired by a condemning authority, the Board shall promptly notify any Institutional Mortgagee affected by such destruction, taking or threatened taking. As used herein, "substantially damaged" shall mean exceeding Ten Thousand Dollars (\$10,000). If requested in writing by an Institutional Mortgagee, the Association shall evidence its obligations under this Section in a written agreement in favor of such First Mortgagee.

ARTICLE 17 GENERAL PROVISIONS

17.1 Enforcement. Either the Association or any Owner, shall have the right to enforce by proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration of any amendment hereto, including the right to prevent the violation of any such restrictions, conditions, covenants, or reservations and the right to recover damages or other dues for such violation; provided, however, that the Association shall have the exclusive right to enforce assessment liens. The Association or any Member shall also have the right to enforce by proceedings at law or in equity the provisions of the Articles, Bylaws, or Association Rules, and any amendments thereto. Failure by the Association, Declarant or by any Member to enforce any covenant condition, or restriction herein contained, or the Articles and the Bylaws, in any certain instance or on any particular occasion shall not be deemed a waiver of such right on any such future breach of the same covenant, condition or restriction.

17.2 Not a Public Dedication. Nothing contained in this Agreement shall, or shall be deemed to, constitute a gift or dedication of any portion of the Property to the general public or for the benefit of the general public or for any public purpose whatsoever, it being the intention of the parties that this Agreement will be strictly limited to and for the purposes expressed herein.

17.3 Severability. Invalidation of any one of these covenants, conditions or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

17.4 Term. The covenants, conditions and restrictions of this Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable by the Association or any

Member, their respective legal representatives, heirs, successors and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time said covenants, conditions and restrictions shall be automatically extended for a successive period often (10) years, unless an instrument, signed by a majority of the then current Members has been recorded, at least one (1) year prior to the end of any such period agreeing to change said covenants, conditions and restrictions in whole or in part.

17.5 Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a retail commercial and office park and for the maintenance of the Property and the Common Facilities. The Article and Section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions or interpretation or construction.

17.6 Amendments. Subject to the other provisions of this Declaration, including, without limitation, the rights of Mortgagees and/or First Mortgagees pursuant to Article 16 hereof, or otherwise this Declaration may be amended only by the affirmative vote of not less than sixty-six and two-thirds percent (66-2/3%) of the voting power of the Members, and, further, this amendment provision shall not be amended to allow amendments by the vote of less than sixty-six and two-thirds percent (66-2/3 %) of the voting power of the Members; provided, however, any amendment or modification of the Articles 3, 4, 6, and 9 hereof shall require the prior written approval of not less than seventy-five percent (75%) of the Class A Members. An amendment or modification shall be effective when executed by the President and Secretary of the Association who shall certify that the amendment or modification has been approved as hereinabove provided, and recorded in the Official Records of Utah County, Utah

17.7 Singular Includes Plural. Whenever the context of this Declaration requires same, the singular shall include the plural and the masculine shall include the feminine and neuter.

17.8 Nuisance. The result of every act or omission, whereby any provision, condition, restriction, covenants, easement, or reservation contained in this Declaration is violated in whole or in part, is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result, and may be exercised by the Association or any Member. Such remedy shall be deemed cumulative and not exclusive.

17.9 Attorneys' Fees. In the event action is instituted to enforce any of the provisions contained in this Declaration, the party prevailing in such action shall be entitled to recover from the other party thereto as part of the judgment, reasonable attorneys' fees and costs of such suit. In the event the Association is a prevailing party in such action, the amount of such attorneys' fees and costs shall be a Special Assessment with respect to the Lot involved in the action.

17.10 Notices. Any notice to be given to an Owner or a Mortgagee or mortgage servicing contractor under the provisions of this Declaration shall be in writing and may be delivered as follows:

RECORDED

SEP 11 2002

11:11 AM

(a) Notice to an Owner shall be deemed to have been properly delivered when delivered personally or placed in the first class United States mail, postage prepaid, to the most recent address furnished by such Owner in writing to the Association for the purpose of giving notice or, if no such address shall have been furnished, then to the street address of such Owner's Lot. Any notice so deposited in the mail within Utah County, Utah, shall be deemed delivered forty-eight (48) hours after such deposit. In the case of co-Owners, any such notice may be delivered or sent to any one of the co-owners, on behalf of all co-Owners and shall be deemed delivery on all such co-owners.

(b) Notice to a Mortgagee or its mortgage servicing contractor shall be deemed to have been properly delivered when placed in the first class United States mail, postage prepaid, to the address furnished to the Association by such Mortgagee or such contractor for the purposes of notice.

17.11 Effect of Declaration. This Declaration is made with the intent to establish a general scheme for the use, occupancy and enjoyment of the Property and each and every Lot and portion thereof. Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances and regulations applicable thereto.

17.12 Personal Covenant. To the extent the acceptance of a conveyance of a Lot creates a personal covenant between the Owner of such Lot and Declarant or other Owners, such personal covenant shall terminate and be of no further force or effect from and after the date when a person or entity ceases to be an Owner except to the extent this Declaration may provide otherwise with respect to the payment of money to the Association.

17.13 Non-liability of Officials. To the fullest extent permitted by law, neither the Board, the Architectural Committee or any other committee of the Association or any member of such Board or committee shall be liable to any Member or the Association for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, omission, error, negligence or the like made in good faith within which such Board, committees or persons reasonably believed to be the scope of their duties.

17.14 Leases. Any agreement for the leasing or rental of a Lot (hereinafter in this Section referred to as a "lease") shall provide that the terms of such lease shall be subject in all respects to the provisions of this Declaration, the Articles, the Bylaws and the Association Rules. Said lease shall further provide that any failure by the lessee thereunder to comply with the terms of the foregoing documents shall be a default under the lease. All leases shall be in writing. Any Owner who shall lease such Owner's Lot shall be responsible for assuring compliance by such Owner's lessee with this Declaration, the Articles, Bylaws and Association Rules.

17.15 Construction by Declarant. Nothing in this Declaration shall limit the right of Declarant and its successors in interest at any time and from time to time to alter the Common Facilities or the Lots, or to construct such additional Improvements as Declarant and its successors in interest deem advisable prior to completion and sale of the entire Phase in which such Lots or Common

Facilities are located. Such right shall include but shall not be limited to erecting, constructing and maintaining on the Property such structures and displays as may be reasonably necessary for the conduct of its business of completing the work and disposing of the same by sale, lease or otherwise. This Declaration shall not limit the right of Declarant at any time prior to acquisition of title by a purchaser from Declarant to establish on the Property additional licenses, reservations and rights-of-way to itself, to utility companies, or to others as may from time to time be reasonably necessary to the proper development and disposal of the Project. Prospective purchasers and Declarant shall have the right to use the Common Facilities for access to the sale facilities of Declarant, and Declarant reserves the right to alter its construction plans and designs as it deems appropriate. Declarant shall exercise its rights contained in this provision in such a way as not to unreasonably interfere with the Members' rights to use and enjoy the Common Facilities and the Lots.

17.16 Assignability of Declarant's Rights. The rights of Declarant hereunder may be assigned to any successor or successors to all or part of Declarant's respective interest in the Covered Property, by an express assignment incorporated in a recorded deed or lease, as the case may be, transferring such interest to such successor.

IN WITNESS WHEREOF, Declarant has executed this instrument the day and year first herein above-written.

DECLARANT:

AK HOLDING COMPANY, L.C., a Utah limited liability company

By: Markhammensen

Its: Manager of Bessmark Investments, Manager

BUSH PROPERTIES, L.C., a Utah limited liability company

By: Markhammensen

Its: Member

THANKSGIVING POINT DEVELOPMENT COMPANY, L.C., a Utah limited liability company

By: Karen Ashton

Its: Member

POINT DEVELOPMENT, L.C., a Utah limited liability company

By: Markhammensen

Its: Manager of Bessmark Investments, Manager

10/10/02
10/10/02
10/10/02

WHISTLE STOP DEVELOPMENT CORP., a Utah corporation

By: M. W. Thompson

Its: Secretary/Treasurer

THANKSGIVING POINT BUILDING THREE, L.C., a Utah limited liability company

By: Raymond D. Bay

Its: Manager

RECEIVED

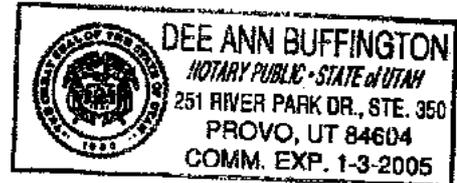
FEB 21 2002

LEHIGH

STATE OF UTAH)
) ss.
COUNTY OF UTAH)

The foregoing instrument was acknowledged before me this day of Sept. 25, 2001, by Ralph W. Rasmussen as Manager of Beesmark Investments, L.C. which is manager of AK Holding Company, L.C. a Utah limited liability company and Point Development L.C., a Utah limited liability company.

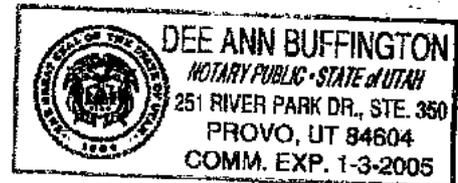
Dee Ann Buffington
Notary Public



Residing at: Provo, Utah My commission expires: 1-3-2005

The foregoing instrument was acknowledged before me this day of Sept 25, 2001, by Ralph W. Rasmussen as Member of Bush Properties, L.C., a Utah limited liability company.

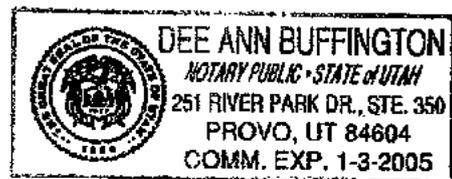
Dee Ann Buffington
Notary Public



Residing at: Provo, Utah My commission expires: 1-3-2005

The foregoing instrument was acknowledged before me this day of Sept. 25, 2001, by Ralph W. Rasmussen as Sec. / Treasurer of Whistle Stop Development Corp., a Utah corporation.

Dee Ann Buffington
Notary Public



Residing at: Provo, Utah My commission expires: 1-3-2005

RECORDED

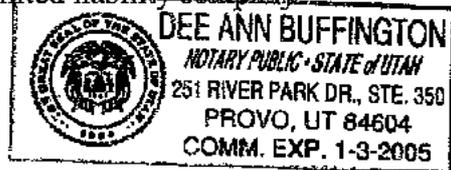
SEP 27 2002

10:00 AM

STATE OF UTAH)
)ss.
COUNTY OF UTAH)

The foregoing instrument was acknowledged before me this day of Sept. 25, 2001, by Karen Ashton as Member of Thanksgiving Point Development Company, L.C., a Utah limited liability company.

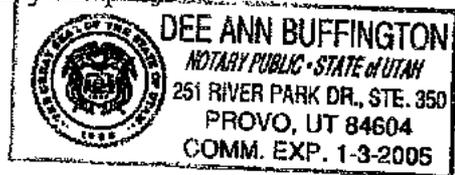
Dee Ann Buffington
Notary Public



Residing at: Provo, Utah My commission expires: 1-3-2005

The foregoing instrument was acknowledged before me this day of Sept. 25, 2001, by Gregory Gagon as Manager of Thanksgiving Point Building Three, L.C., a Utah limited liability company.

Dee Ann Buffington
Notary Public



Residing at: Provo, Utah My commission expires: 1-3-2005

RECORDED

SEP 27 2001

1:00 PM

Exhibit A

Beginning at intersection of the west line of the I-15 Frontage Road and the south line of Thanksgiving Point Business Park Plat "A" as found and on file at the Utah County Records Office, Map No. 8411, said point being South $0^{\circ}01'17''$ East 63.82 feet along the section line and South $89^{\circ}58'43''$ West 83.23 feet from the East Quarter Corner of Section 36, Township 4 South, Range 1 West, Salt Lake Base and Meridian, and running;

thence Westerly 31.66 feet along the arc of a 20.00 foot radius curve to the right, (center bears South $48^{\circ}15'59''$ West and the long chord bears North $87^{\circ}05'00''$ West 28.46 feet with a central angle of $90^{\circ}42'00''$);

thence South $47^{\circ}34'00''$ West 338.42 feet along the southeasterly line of said Executive Parkway;
thence Southwesterly 392.83 feet along the arc of a 530.00 foot radius curve to the left, (center bears North $89^{\circ}58'00''$ West and the long chord bears South $68^{\circ}48'00''$ West 383.90 feet with a central angle of $42^{\circ}28'00''$); along the south line of said Executive Parkway;

thence North $89^{\circ}58'00''$ West 851.74 feet along the south line of said Executive Parkway;
thence Southwesterly 51.10 feet along the arc of a 32.00 foot radius curve to the right, (center bears South $0^{\circ}02'00''$ West and the long chord bears South $44^{\circ}17'01''$ West 45.84 feet with a central angle of $91^{\circ}29'59''$);

thence South $1^{\circ}27'59''$ East 513.57 feet along the east line of said Ashton Boulevard;
thence Southerly 280.01 feet along the arc of a 424.00 foot radius curve to the right, (center bears North $88^{\circ}32'02''$ East and the long chord bears South $20^{\circ}23'06''$ East 274.95 feet with a central angle of $37^{\circ}50'17''$), along the northeast line of said Ashton Boulevard;

thence South $39^{\circ}18'15''$ East 1643.66 feet along the Northeast line of said Ashton Boulevard;
thence Southeasterly 507.88 feet along the arc of a 574.00 foot radius curve to the left, (center bears North $50^{\circ}41'45''$ East and the long chord bears South $64^{\circ}39'08''$ East 491.47 feet with a central angle of $50^{\circ}41'45''$) along the north line of said Ashton Boulevard;

thence South $90^{\circ}00'00''$ East 617.98 feet along the north line of said Ashton Boulevard;
thence North $0^{\circ}58'24''$ West 667.30 feet along the west line of said 2300 West Street;
thence Northeasterly 426.71 feet along the arc of a 765.00 foot radius curve to the left, (center bears North $89^{\circ}01'36''$ East and the long chord bears North $15^{\circ}00'22''$ East 421.20 feet with a central angle of $31^{\circ}57'33''$), along the northwest line of said 2300 West Street;

thence North $49^{\circ}35'37''$ East 460.65 feet along the northwest line of said 2300 West Street;
thence South $41^{\circ}44'00''$ East 1702.57 feet along the west line of said I-15 Frontage Road;
thence Southeasterly 292.33 feet along the arc of a 5769.58 foot radius curve to the left, (center bears North $48^{\circ}16'00''$ East and the long chord bears South $43^{\circ}11'05''$ East 292.30 feet with a central angle of $2^{\circ}54'11''$) along the west line of said I-15 Frontage Road;

thence South $44^{\circ}38'11''$ East 385.23 feet along the west line of said I-15 Frontage Road;
thence South $00^{\circ}06'36''$ East 36.60 feet along the west line of said I-15 Frontage Road;
thence South $89^{\circ}57'57''$ East 36.09 feet along the west line of said I-15 Frontage Road;

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thence South 44°38'11" East 281.23 feet along the west line of said I-15 Frontage Road;
 thence South 89°57'57" East 14.06 feet along the west line of said I-15 Frontage Road;
 thence South 44°38'11" East 262.61 feet along the west line of said I-15 Frontage Road;
 thence South 21°57'46" West 489.72 feet;
 thence South 00°00'00" West 247.12 feet;
 thence South 0°49'35" West 1.19 feet;
 thence North 89°44'51" West 1993.14 feet;
 thence North 0°58'26" West 546.34 feet;
 thence South 87°27'44" West 193.97 feet;
 thence South 1°47'20" East 9.57 feet;
 thence South 87°33'52" West 463.56 feet;
 thence South 0°10'05" West 3.29 feet;
 thence South 89°10'40" West 196.43 feet to the east line of the Denver & Rio Grande Railway
 right-of-way;
 thence Northwesterly 342.52 feet along the arc of a 7850.00 foot radius curve to the left, (center
 bears North 48°11'45" East and the long chord bears North 40°33'15" West 342.49 feet with a central
 angle of 2°30'00"), along the east line of said Denver & Rio Grande Railway right-of-way;
 thence North 39°18'15" West 5279.14 feet along the east line of said Denver & Rio Grande
 Railway right-of-way;
 thence North 40°05'30" East 1130.20 feet along the north line Thanksgiving Point Business Park
 Plat "A";
 thence North 40°01'45" East 162.73 feet;
 thence North 86°48'47" East 1228.96 feet;
 thence Southeasterly 588.35 feet along the arc of a 2241.83 foot radius curve to the right, (center
 bears South 72°59'26" West and the long chord bears South 9°29'28" East 586.66 feet with a central
 angle of 15°02'13"), along the west line of the I-15 Frontage Road;
 thence South 1°58'21" East 68.14 feet along the west line of said I-15 Frontage Road to the north
 line of Club House Drive as called for in a Quit Claim Deed recorded as Entry No. 20838 on February
 22, 1999, in Book 4983, Page 393 of the Official Records;
 thence South 01°58'21" East 70.02 feet along the west line of said I-15 Frontage Road;
 thence South 01°58'21" East 10.32 feet along the west line of said I-15 Frontage Road;
 thence Southeasterly 278.82 feet along the arc of a 225.00 foot radius curve to the left, (center
 bears North 88°01'39" East and the long chord bears South 37°28'21" East 261.32 feet with a central
 angle of 71°00'00") along the west line of said I-15 Frontage Road;
 thence South 72°58'21" East 124.10 feet along the west line of said I-15 Frontage Road;
 thence South 0°10'52" East 299.17 feet;
 thence South 89°56'48" East 568.78 feet to the west line of the I-15 Frontage Road;
 thence Southeasterly 80.47 feet along the arc of a 1095.92 foot radius curve to the right, (center
 bears South 44°03'35" West and the long chord bears South 43°50'12" East 80.45 feet with a central
 angle of 4°12'25") along the west line of said I-15 Frontage Road;
 thence South 41°44'00" East 811.82 feet along the west line of said I-15 Frontage Road;
 thence South 89°58'00" East 13.41 feet along the west line of said I-15 Frontage Road;
 thence South 41°44'00" East 85.67 feet along the west line of said I-15 Frontage Road to the point

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