

Mail TO:

Stephen Sawby

688 N Riverbirch Cir  
American Fork, UT 84403

## DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

### AND RESERVATION OF EASEMENTS

FOR

ENT 54631 BK 4655 PG 344  
RANDALL A. COVINGTON  
UTAH COUNTY RECORDER  
1998 Jun 01 1:08 PM FEE 43.00 BY JRD  
RECORDED FOR AMERICAN FORK CITY

### RIVERBIRCH PROFESSIONAL PARK PLANNED UNIT DEVELOPMENT

This Declaration of Covenants, Conditions, and Restrictions and Reservation of Easements is made this 18<sup>th</sup> day of MAY, 1998, by Riverbirch Associates, LC, a Utah limited liability company, hereinafter referred to as "Declarant".

#### WITNESSETH:

**Whereas**, Declarant is the owner of certain real property located in the city of American Fork, County of Utah, State of Utah, which is more particularly described in Exhibit A attached hereto and incorporated herein by reference.

**Now, Therefore**, Declarant hereby declares that all properties described in Exhibit "A" and any additional property as may by Subsequent Amendment be added to and subjected to this Declaration shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property subjected to this Declaration, and which shall be binding on all parties having any right, title, or interest in the described properties or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof.

#### ARTICLE I

#### DEFINITIONS

**1.1. "Area of Common Responsibility"** shall mean the Common Area, together with those areas, if any, which by contract with any office building owner or association within the Project become the responsibility of the Association. In addition, the office of any property manager employed by or contracting with the Association and located on the Properties shall be part of the Area of Common responsibility.

**1.2. "Association"** shall mean Riverbirch Professional Plaza Owners' Association, a Utah nonprofit corporation, and its successors and assigns.

**1.3. "Building"** shall mean a structure located on a Lot which is designed and intended for use as a commercial unit including, but not limited to, decks, appliances, electrical receptacles and outlets, air conditioning compressors and other air conditioning apparatus, and exterior surfaces of a Building, together with all improvements located on the same Lot and used in conjunction with such Building, including anything located within or without said Unit and designated and designed to serve only that Building.

**1.4 "Common Area"** shall mean all real property (including the improvements thereto) and all personal property now or hereinafter owned by the Association or otherwise held for the common use and enjoyment of the Owners. The initial Common Area to be owned by the Association at the time of the conveyance of the first lot shall be all real property (including improvements thereto) to within five (5) feet of the each building lot and is set forth and designated as such on the Record Survey Map.

**1.5 "Common Expenses"** shall mean and include the actual and estimated expenses of operating the Association, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the Bylaws, and the Articles of Incorporation of the Association.

**1.6 "Declarant"** shall mean Riverbirch Associates, LC, a Utah limited liability company, and its successors and assigns.

**1.7 "Declaration"** shall mean this Declaration of Covenants, Conditions, and restrictions and Reservation of Easements for Riverbirch Professional Plaza.

**1.8 "Lot"** shall mean any numbered plot of land shown upon any recorded final subdivision map of the Properties with the exception of the Common Area.

**1.9 "Map"** shall mean the instrument entitled Record of Survey Map of Riverbirch Professional Park, recorded concurrently with this Declaration, and any supplemental maps pertaining to the Project and recorded or to be recorded in the office of the County Recorder of Utah County, State of Utah.

**1.10 "Member"** shall mean every person or entity entitled to membership in the Association.

**1.11 "Mortgage"** shall mean any first mortgage or first deed of trust by which a Lot or any part thereof is encumbered, but shall not mean an executory contract of sale.

**1.12 "Mortgagee"** shall mean (i) any persons or entities named as the mortgagee or beneficiary under any first Mortgage or first Deed of Trust by which the interest of any Owner is encumbered, or (ii) any successor in interest of such person or entity under such Mortgage or Deed of Trust, but shall not mean or refer to a seller under an executory contract of sale.

**1.13 "Owner"** shall mean the record Owner, whether one or more persons or entities, including the Declarant, of a fee simple title to any lot which is part of the Properties, as such ownership is shown by the records of the County Recorder of Utah County, State of Utah. The term "Owner" shall not refer to any Mortgagee (unless such Mortgagee has obtained title in fee simple to a Lot pursuant to a judicial or nonjudicial action, including, without limitation, a foreclosure proceeding or any deed or other

arrangement in lieu of foreclosure) or to any person or persons purchasing a Lot under contract (until such contract is fully performed and legal title conveyed of record.)

**1.14 "Project"** shall mean the property described in Exhibit "A".

**1.15 "Property" or "Properties"** shall mean that certain real property described in Exhibit "A" attached hereto, and such additions thereto as may hereafter be annexed by Subsequent Amendment to this Declaration or which is owned by the Association.

**1.16 "Subsequent Amendment"** shall mean an amendment to this Declaration which adds additional property to that covered by this Declaration. Such Subsequent Amendment may, but is not required to, impose, expressly or by reference, additional restrictions and obligations on the land submitted by that Amendment to the provisions of this Declaration.

**1.17 "Unit"** shall mean a Lot as well as any Building or structure thereon and the undivided interest (expressed as a percentage of the entire ownership interest) in the Common Areas appurtenant to such Lot as set forth in Exhibit "B" attached hereto and by this reference made a part

## ARTICLE II

### COMMERCIAL DEVELOPMENT

**2.1 Land Use.** The Property is zoned according to American Fork City Zoning Ordinances. No portion of the Property shall be used for any purpose unless the same is permitted within said classification as it exists on the date this Declaration is recorded or as it may be amended from time to time by proper authority.

**2.2 Building Quality.** All buildings shall be of a quality of workmanship and materials substantially the same or better than that which can be procured for buildings in similar projects on the date this Declaration is recorded. The quality of materials shall be subject to architectural control approval, as herein provided, as well as to any particular specifications required by applicable governmental body or authorities having jurisdiction over the Project.

**2.3 Set-Back Lines.** All building set-back lines shall be within the prescribed allowances or limitations as set forth by the city of American Fork.

**2.4 Landscaping.** All landscaping shall be completed within one year from the time of occupancy or completion of the building. Landscaping shall prevent the free flow of soil from any lot onto any adjacent sidewalk, street, parkway, or lot. No tree, shrub, or other planting of any kind shall be allowed to overhang or otherwise encroach upon any sidewalk or pedestrian way from ground level to a height of seven (7) feet. The Association shall keep all shrubs, trees, grass, and plantings of every kind neatly

trimmed, properly cultivated and irrigated, and free from trash, weeds, and other unsightly material.

**2.5 Utility and Drainage Easements.** Easements for installation and maintenance of utilities and drainage facilities shall be set forth in any site plan approvals required by the city of American Fork. Within these easements, no structure, planting, or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area for any portion of the Property and all improvements within such area shall be maintained continuously by the Owner thereof, except for those improvements, if any, for which a public authority or utility company is responsible.

**2.6 Signage.** All buildings shall have a uniform signage plan and policy, and all signs shall be in conformance thereto. Owners shall submit to Declarant a proposal for any and all exterior signs to be erected on the lot or to be erected on or affixed to the building, indicating the size, type, coloring, and location thereof. No signs, flags, awnings, or other advertising devices of any nature, including without limitation, commercial, political, informational, or directional signs or devices, shall be installed or affixed without the prior inspection and written approval of the Declarant, except as may be necessary temporarily to caution or warn of danger. All signs and other advertising devices of any nature must meet the requirements of and be in conformance with the signage ordinances of the city of American Fork, State of Utah.

**2.7 Nuisances.** No noxious or offensive activity shall be carried on upon the Property nor shall anything be done thereon which may be or may become an annoyance or nuisance within the general Project area. The Property shall be kept in a clean, neat, sanitary, and orderly condition, free of refuse and litter, objectionable noise, odors, nuisances, and will in all respects and at all times fully comply with the health, safety, and police regulations, rules, orders, and the like.

**2.8 Deliveries.** All deliveries or shipments of any kind to and from the buildings, including loading and unloading of goods shall be done only at such times as to not unreasonably interfere with other buildings and invitees thereof.

**2.9 Promotional Materials.** Owners shall not place or allow to be placed on any vehicles parked on the Project and handbills, bumper stickers, or other advertising or promotional materials.

**2.10 Hazardous Materials.** No portion of the property shall be used to place, hold, or dispose of any hazardous materials or inflammables, such as gasoline, kerosene, naphtha, benzene, explosives, or any other substance of an intrinsically dangerous nature.

**2.11 Temporary Structures.** No structure of a temporary nature nor any trailer, tent, shack, or other out-buildings shall be used upon the Property at any time except during construction and then only for the storage or equipment and/or materials.

**2.12 Oil and Mining Operations.** No oil drilling, oil development, oil refining, quarrying, or mining operation of any kind shall be permitted upon the Property nor shall oil wells, tanks, tunnels, or mineral excavations or shafts be permitted.

**2.13 Garbage and Refuse Disposal.** No portion of the Property shall be used or maintained as a dumping ground for rubbish or debris. Trash, garbage, or other waste shall not be kept on the Property except in sanitary containers. All containers used for the storage or disposal of such materials shall be kept in a clean and sanitary condition and secured from the view of all adjoining buildings and common areas. During construction, excess building materials and debris shall not be permitted to accumulate.

**2.14 Parking; Trucks, Boats, Campers, Etc.** Parking of automobile vehicles within the Project shall be limited to designated parking areas and shall not obstruct the free flow of traffic over or through the Project. No automobiles, trucks, motor homes, recreational vehicles, boats, snowmobiles, or other similar vehicles or mechanical equipment shall be parked or stored on any interior roadway, right-of-way, or parking lot located on the Property or within the Project for a period of time in excess of twenty-four (24) hours.

**2.16 Maintenance of Property.** Whether improved or unimproved, the Property shall be kept free of rubbish, weeds, trash, and debris of any kind and must be maintained in such manner as to not detract from the Property or the Project as a whole. Sidewalks, curbs, and gutters shall be kept clean, unobstructed and in good repair.

**2.17 Ingress, Egress, and Parking Lots.** There is hereby created a non-exclusive reciprocal easement on all interior roadways, drives, rights-of-way, entrances, exits and parking lots on the Property which shall serve the entire Project and shall provide ingress, egress, and parking to owners and occupants of all buildings within the Project and their invitees.

**2.18 Prohibition on Condominium Usage.** Title to no part of a Lot, Building, Unit, or other improvement constructed on any Lot in the Project, nor any portion thereof, may be further subdivided or separated from any other part thereof. Each Lot, Building, or Unit and the undivided interest in the Common Areas appurtenant to each Lot or Unit shall always be conveyed, devised, encumbered and otherwise affected only as a complete Lot or Unit. Every devise, encumbrance, conveyance or other disposition of a Lot or Unit, or any part thereof, shall be construed to be a devise, encumbrance, conveyance, or other disposition, respectively, of the entire Lot or Unit, together with all appurtenant rights created by law or by this Declaration, including appurtenant membership in the Association as herein set forth. No building or any portion thereof can be sold, conveyed, used, maintained, or occupied as a condominium.

**2.19 Occupancy.** Each Building in the Project will consist of an upper and a lower level, each level having an area of approximately six thousand (6000) square feet. The upper level of each Building may be occupied by one or more commercial or professional offices, and one-half (1/2) of the square footage of the lower levels of Buildings 2 and 3 as designated on the Record of Survey Map may also be used for commercial or professional offices. The remaining one-half of the square footage of the lower levels of Buildings 2 and 3 and all of the lower levels of Buildings 1 and 4, as well as any other portions of any Buildings in the Project, may be used for storage purposes only, and cannot be used for any other purpose including, without limitation, offices, work stations for employees or other personnel or rest rooms, unless and until additional parking is approved by American Fork City.

**2.20 Leasing.** An Owner may lease his Unit, or a portion thereof, provided that such lease transaction is in accordance with the provisions of sections 2.21 and 2.22 hereof.

**2.21 Structural Changes and Prohibitions.** No Owner shall make structural alterations or modifications to his Unit, or any part thereof, or to any of the Common Areas, including, but not limited to, the erection of antennas, aerials, awnings, or the placement of any reflective or other material in the windows of the Unit, or other exterior attachments, without the prior written approval of the Declarant. The Declarant shall not approve any alterations, decorations, or modifications which would jeopardize or impair the soundness, safety, or appearance of the Project. The erection, removal, or alteration of interior walls in a Building for the purpose of creating or subdividing office suites for lease by the Owner of such Building or Unit shall require the approval of the Declarant subject to such conditions as he may impose, including, but not limited to, minimum office suite size requirements, architectural plans, maintenance of liability insurance during construction, performance and payment bonds, or otherwise, the expense of which must be borne by the affected Owners. The Declarant may, at its sole option, delegate to the Association its responsibilities and powers under this section.

**2.22 Right of Refusal.** No Owner may dispose of or lease a Unit, or lease any part thereof, without the approval of the Declarant, which approval should be obtained in the manner hereafter provided except for (i) conveyances by gift, devise, or inheritance; (ii) conveyance by one joint Owner of a Unit to one or more other joint Owners of the same Unit; (iii) upon the dissolution of a professional corporation which is an Owner, the conveyance of the Unit to the shareholders thereof as joint Owners; (iv) upon the formation of a professional corporation by joint Owners to such professional corporation; (v) upon the formation of a partnership or limited liability company by joint Owners, the conveyance to such partnership or limited liability company; (vi) upon the admission of a new partner or member to a partnership or limited liability company which is an Owner; or (vii) the dissolution of a partnership or limited liability company which is an Owner, the conveyance of such Unit to the partners or members thereof as joint Owners. The Declarant may, at its sole option, delegate to the Association its responsibilities and powers under this section.

(a) **Written Notice of Sale or Lease.** An Owner intending to make a sale of a Lot, Unit, or Building, or intending to lease a Lot, Unit, Building, or any part thereof, except as hereinabove permitted, shall give written notice to the Declarant of such intention, together with the name and address of the intended purchaser or lessee, and other such information as the Declarant may reasonably require in connection with such transaction. Such Owner shall, by such notice, also furnish the Declarant with the terms and conditions of the proposed sale or lease. The giving of such notice shall constitute a warranty and representation by such Owner to the Declarant and to any purchaser or lessee produced by the Declarant as hereinafter provided, that such Owner believes the proposal to be bona fide in all respects. No proposed transaction shall be deemed bona fide which is not evidenced by a written contract of sale or lease, subject to the rights of first refusal contained herein, executed by the selling or leasing Owner and the proposed purchaser or lessee and containing all the proposed terms of the sale or lease.

(b) **Response to Notice.** Within fifteen (15) days after receipt of the notice and the information described in (a) above, the Declarant shall either approve the transaction, provide an executed contract of sale or lease by a substitute purchaser or lessee, or execute a contract of sale or lease in accordance with the terms of the notice described in (a) above. Failure of the Declarant to execute a contract of sale or lease, or furnish a contract of sale or lease executed by a substitute purchaser or lessee within the above described period for any reason whatsoever shall entitle the Owner to sell or lease the Unit in accordance with the terms of sale or lease furnished to the Declarant pursuant to (a) above following which the Declarant shall, nevertheless, if requested by such selling or leasing Owner, or the proposed purchaser or lessee of such Owner who has executed a contract of sale or lease, furnish within five (5) business days of such request a recordable statement certifying to any waiver of, or failure or refusal to exercise, such right of first refusal if such waiver, failure, or refusal does in fact occur. Failure or refusal to furnish such statement within such period shall cause all such rights and restraints to be inapplicable to the sale or lease of the Lot or Unit in contemplation of which such statement was requested.

(c) **Mortgagee Rights.** The provisions of this section 2.22 shall not be applicable to a sale pursuant to the exercise of remedies granted in a mortgage affecting the Unit, and the delivery of a deed in lieu of foreclosure, provided the mortgagee of the affected Unit gives the Declarant at least fifteen (15) days' prior written notice of such sale together with such other information as the Declarant may reasonably require in connection therewith.

(d) **Declarant Exemption.** The Declarant shall not be subject to this section 2.22 in the first sale or lease of any Unit owned by the Declarant.

**ARTICLE III**  
**PROPERTY RIGHTS**

**3.1 Owner's Easements of Enjoyment.** Each Owner shall have a right and easement of enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with the title to every Lot.

**3.2 Easement for Ingress, Egress, and Lateral Support.** Each Owner shall have the unrestricted right to ingress and egress upon and across the Common Areas designated for use in connection with his Lot, and each Owner shall have the right to horizontal and lateral support of the Lot and such rights shall be appurtenant to and pass with the title to each Lot.

**3.3 Easement for Encroachment.** If any part of the Common Areas encroaches or shall hereafter encroach upon a Lot or Lots, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Lot encroaches or shall hereafter encroach upon the Common Areas or upon an adjoining Lot or Lots, an easement for such encroachment and for the maintenance of the same shall and does exist. Such encroachments shall not be considered to be encumbrances either on the Common Areas or on the Lots. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of the Building(s) on the Property, by error in the Map, by settling, raising, or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof.

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

Lot No. \_\_, Riverbirch Professional Park Planned Unit  
Development, as identified in the Record of Survey Map recorded in the office of  
the Utah County Recorder, as entry No. \_\_\_\_\_, Map No. \_\_\_\_\_, and  
as identified and described in and subject to the "Declaration of Covenants,  
Conditions, and Restrictions and Reservation of Easements for Riverbirch  
Professional Park Planned Unit Development" recorded in the office of the Utah  
County recorder as Entry No. \_\_\_\_\_, in Book \_\_\_\_\_, at Pages  
\_\_\_\_\_, together with a right and easement of use and enjoyment in and to  
the Common Areas described, and as provided for in said Declaration of  
Covenants, Conditions, and Restrictions and Reservation of Easements as said  
Declaration may have been amended or supplemented.

Regardless of the form of conveyance used, however, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires an interest in a Lot or Unit. Membership in the Association shall not be



separated from the Lot to which it pertains, and even though not specifically mentioned in the instrument of transfer, such mandatory membership in the Association shall automatically accompany the transfer of the Lot to which it relates.

## ARTICLE IV

### PROPERTY OWNERS' ASSOCIATION

**4.1 Membership.** Membership in the Riverbirch Professional Plaza Owners' Association, ("Association") shall be appurtenant to the land subject to this Declaration. Membership in the Association cannot be severed or transferred separately from the real property to which it is appurtenant.

**4.2 Membership Interest.** The interest of each Member in the Association shall correspond to ownership of a Lot within the Project. Such interest may be evidenced by a certificate or other writing from the Association. A Member shall be entitled to one vote for each Lot owned. 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 as they determine, but in no event shall more than one vote be cast with respect to any Lot. The Declarant shall be entitled to three (3) votes.

**4.3 Voting Rights, Assessments, Etc.** The voting rights of members of the Association and their responsibility to pay assessments to the Association for Association purposes shall be based upon their respective membership interest; provided, however, that no assessments shall be due or payable on any portion of any additional land prior to the occupation of any building constructed on such portion.

**4.4 Creation of the Lien and Personal Obligation of Assessments.** The Declarant, for each Lot owned within the Property, 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 to the Association: (1) mandatory monthly assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided or as provided in the Bylaws of the Association. The monthly and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each 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 property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

**4.5 Records of Ownership.** Each Owner shall promptly cause to be duly filed of record the conveyance document, or notice of interest in the case of a contract sale, to him of his Lot and shall file a copy of such conveyance document with the Declarant and with the Secretary of the Association which shall maintain a record of ownership of the

Lots. Any Owner who mortgages his Lot or any interest therein shall notify the Declarant and the Secretary of the Association of the name and address of the Mortgagee and also of the release of such mortgage. The Secretary of the Association shall maintain all such information in the records of ownership. The Declarant and the Association may at any time obtain and rely on information from the Utah County Recorder regarding Owners and Mortgages of Lots.

**4.6 Purposes.** The purposes of the Association shall be to assure that the Project is developed and maintained as an integrated development; to care for and maintain any property owned by it, either real or personal, to maintain and repair any property in the Project the use of which is common to and beneficial to the whole Project regardless of ownership, including landscaping, plantings, snow removal, water irrigation systems, lighting, sewer and water lines, easements, rights-of-way, walkways, sidewalks, parking areas, fences, streams, etc.; and to enforce the provisions of this Declaration, if and when necessary. The Association is not responsible for utility systems not enumerated above.

**4.7 Rules and Regulations.** To carry out its purposes, the Association shall adopt Bylaws and/or Rules and Regulations and promulgate the same to its members, including amendments thereto made from time to time.

**4.8 Association Assessment.** To carry out its purposes, the Association shall adopt a fiscal year and proposed budget for such fiscal year. Except for the first fiscal year, which may be less than twelve (12) months, the Association shall adopt and communicate its budget to its members during the forty-five (45) days prior to the commencement of each fiscal year. The budget shall be allocated among the Association members on the basis of membership interests as set forth herein. The assessment of each member for the fiscal year shall be paid to the Association in monthly or other convenient installments as determined by the Association.

**4.9 Maximum Monthly Assessment.** The initial maximum monthly assessment shall be sixty dollars (\$60.00) per Lot.

- (a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum monthly assessment may be increased each year not more than ten percent (10%) above the maximum assessment for the previous year without a vote of the membership.
- (b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum monthly assessment may be increased above ten percent (10%) by a vote of two-thirds (2/3) of the members who are voting in person or by proxy, at a meeting duly called for this purpose.
- (c) The Association may fix the monthly assessment at an amount not in excess of the maximum.

**4.10 Reserves and Working Capital.** The Association shall establish the following funds:

- (a) **Reserve Fund.** The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of improvements to the Common Areas . The reserve fund shall be maintained out of regular assessments for Common Expenses.
- (b) **Working Capital Fund.** The Declarant shall establish and maintain for the Project a working capital fund equal to at least three (3) monthly installments of the annual assessment for each Unit. Each Unit's share of the working capital fund must be collected and transferred to the Association at the time of the closing of the sale of that Lot or Unit. The purpose of the working capital fund is to ensure that the Association will have cash available to meet unforeseen expenditures or to acquire additional equipment or services deemed necessary or desirable by the Association. Amounts paid to the working capital fund are not to be considered advance payments of any regular assessment. Upon transfer of a Unit, the Owner's interest in the working capital fund shall automatically be transferred to the new Owner.

**4.11 Reimbursement Assessment.** The Association shall levy a reimbursement assessment against any owner if as a result of his failure to comply with this Declaration, the bylaws, or the Association rules, monies were or will be expended by the Association in performing its duties or rights. Such assessment shall be for the purpose of reimbursing the Association, shall be limited to the monies expended or to be expended, and shall be due and payable to the Association when levied.

**4.12 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 whatsoever, including without limitation, a claim that the Association is not properly exercising its duties of enforcement.

**4.13 Effect of Nonpayment of Assessments and Remedies of the Association.** Any assessment provided for in this Declaration which is not paid when due shall be delinquent and subject to a late charge in an amount as determined by the Association from time to time which charge shall not exceed the maximum amount permitted under the laws of the State of Utah. If such assessment is not paid within thirty (30) days after the due date, it shall bear interest from the due date at the rate of twenty-one percent (21 %) per annum. In the event of a default or defaults in payment of any such assessment or assessments, and in addition to any other remedies herein or by law provided, the Association may enforce each such obligation by proceeding as is set forth as follows:

(a.) By suit or suits at law to collect each such assessment obligation. Said action shall be brought in the name of the Association and the Association shall be deemed to be acting on behalf of all the owners. Any judgment or award rendered in any such action against any such owner may include actual attorneys' fees reasonably incurred to be fixed by the court, interest at twenty-one percent (21%) per annum to date of judgment, and collection costs. Upon satisfaction of any such judgment, any authorized officer or agent of the Association shall, on behalf of the Association, execute and deliver to the judgment debtor an appropriate satisfaction thereof, or

(b.) By the Association giving written notice to the defaulting owner, specifying the date of the delinquency, the amount of the delinquency and demanding payment thereof. If such delinquency is not paid within ten (10) days after giving such notice, the Association may record a lien on the property of the defaulting owner. The lien may be foreclosed in the manner prescribed for the foreclosure of mortgages in the State Of Utah.

(c.) The Association may, at its option, cut off services.

## ARTICLE V

### ARCHITECTURAL CONTROL

**5.1 Architectural Control.** No building, fence, wall, or other structure shall be commenced, erected, placed, maintained, or altered on the Property until the construction plans and specifications showing the nature, kind, shape, height, materials, and location of the same has been submitted to and approved in writing by Declarant.

**5.2 Procedure.** All plans and specifications submitted to Declarant for approval must be submitted in duplicate and accompanied by a written request for approval. Declarant's approval or disapproval shall be in writing and returned to the one making submission, together with a notation of approval or disapproval and the date thereof affixed to one copy of such plans and specifications. In the event Declarant fails to approve or disapprove of such plans and specifications within thirty (30) days after the same has been submitted, approval will not be required and the related covenants herein shall be deemed to have been fully complied with.

**5.3 Transfer of Control.** At such time as it chooses, the Declarant may transfer all matters pertaining to the architectural control to the Association for its determination.

## ARTICLE VI

### GENERAL PROVISIONS

**6.1 Term.** These covenants shall run with the land and shall be binding on all parties and all persons claiming under them for a period of forty (40) years from the date

of recordation of this Declaration, after which time the covenants shall be automatically extended for successive periods of ten (10) years each unless an instrument in writing signed by a majority in interest of the then members of the Association has been recorded, agreeing to change the covenants in whole or in part; provided, however, that no amendment shall contravene with any applicable statute or ordinance.

**6.2 Amendment.** Except as otherwise provided above, this Declaration can be amended at any time by a recorded writing executed by seventy-five percent (75 %) of the then members of the Association; provided, however, that no amendment shall contravene with any applicable statute or ordinance.

**6.3 Attorney Fees.** In any cause of action by the Association to enforce the provisions of this Declaration, including the collection of delinquent assessments, whether or not suit is filed, the Association shall be entitled to reasonable attorneys' fees and costs.

**6.4 Conflict and Severability.** In the event that any of the provisions of this Declaration are in conflict with the then-existing zoning or building ordinances of the city of American Fork or the statutes or laws of the State of Utah or the United States of America, such ordinances and statutes shall control. If any provision, paragraph, sentence, clause, phrase, or word of this Declaration should under any circumstance be invalidated, such invalidity shall not affect the validity of the remainder of the Declaration and the application of such provision, paragraph, sentence, clause, phrase, or word in any other circumstance shall not be affected thereby.

**6.5 Headings and Titles.** Headings and titles of sections are used in this Declaration for convenience or reference only and are not intended to limit, enlarge, or change the meaning or contents thereof.

**6.6 Effective Date.** This Declaration shall take effect upon the recording on the office of the County Recorder of Utah County, State of Utah.

**6.7 Cumulative Remedies.** The rights and remedies of the parties hereto shall be construed cumulatively, and none of such rights and remedies shall be exclusive of or in lieu or limitation of any other right, remedy or priority allowed by law.

**6.8 Notice.** Any notice or other communication required or permitted to be given hereunder shall be deemed to have been received (a) upon personal delivery or actual receipt thereof or (b) within two (2) days after such notice is deposited in the United States mail, postage prepaid and certified and addressed to the respective addresses set forth above or to such other address(es) as may be supplied by a party to the other from time to time in writing.

**6.9 Waiver of Breach.** Any waiver by either party of any breach of any kind or character whatsoever by the other, whether such be direct or implied, shall not be

construed as a continuing waiver of, or consent to any subsequent breach of this Agreement.

# SURVEYOR'S CERTIFICATE

I, DAVID V. THOMAS, DO HEREBY CERTIFY THAT I AM A REGISTERED LAND SURVEYOR, AND THAT I HOLD CERTIFICATE NO. 163947 AS PRESCRIBED UNDER THE LAWS OF THE STATE OF UTAH. I FURTHER CERTIFY BY AUTHORITY OF THE OWNERS, I HAVE MADE A SURVEY OF THE TRACT OF LAND SHOWN ON THIS PLAT AND DESCRIBED BELOW, AND HAVE SUBDIVIDED SAID TRACT OF LAND INTO PRIVATE AREA, COMMON AREA, AND EASEMENTS AND THE SAME HAS BEEN CORRECTLY SURVEYED AND STAKED ON THE GROUND AS SHOWN ON THIS PLAT AND THAT THIS PLAT IS TRUE AND CORRECT.

MAY 12, 1998  
DATE

David V. Thomas  
SURVEYOR (SEE SEAL BELOW)

## BOUNDARY DESCRIPTION

BEGINNING AT A POINT WHICH IS N 89°32'54" E ALONG THE SECTION LINE 1152.514' FROM THE ~~NW COR OF SEC 19, T5S, R2E, S18&M;~~

**THENCE**  
N 00°58'22" E 67.17'; THENCE  
ALONG THE ARC OF A 15.00' RADIUS CURVE TO THE RIGHT  
23.40' (CURVE HAS A CENTRAL ANGLE OF 89°23'41"  
AND A CHORD BEARING N 45°40'13" E 21.10'); THENCE  
S 89°37'57" E 339.855'; THENCE  
SOUTH 283.12'; THENCE  
N 89°13'32" W 129.80'; THENCE  
S 00°34'47" W 75.78'; THENCE  
N 89°46'00" W 230.22'; THENCE  
N 00°58'22" E 276.52' TO THE POINT OF BEGINNING.

CONTAINING 2.715 ACRES  
BASIS OF BEARING = STATE PLANE

## OWNER'S DEDICATION

KNOWN ALL MEN BY THESE PRESENTS THAT WE, ALL THE UNDERSIGNED OWNERS OF ALL OF THE PROPERTY DESCRIBED IN THE SURVEYOR'S CERTIFICATE HEREON AND SHOWN ON THIS MAP, HAVE CAUSED THE SAME TO BE SUBDIVIDED INTO PRIVATE AREA, COMMON AREA, AND EASEMENTS AND DO HEREBY DEDICATE THE COMMON AREA AND EASEMENTS AS PUBLIC UTILITY EASEMENTS.

IN WITNESS WHEREOF WE HAVE HEREUNTO SET OUR HANDS THIS 18<sup>th</sup>  
DAY OF May, A.D. 19 98

Riverbich Associates L.C by:  
James W. Hummer member Carl A. Larson member  
Stephen Sawby member Brent K. Lane member

## ACKNOWLEDGMENT

Signature Page

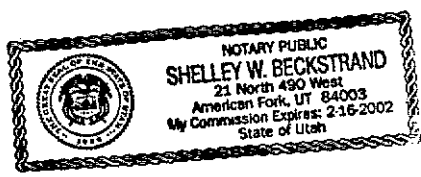
**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
AND RESERVATION OF EASEMENTS FOR  
RIVERBIRCH PROFESSIONAL PARK PLANNED UNIT DEVELOPMENT**

Date: 18 May 1998  
Signed: Stephen Sowby  
Jesse W. Hunsaker  
Jesse W. Hunsaker

State of Utah )  
)ss.  
County of Utah )

On the date above, Jesse Hunsaker, Stephen Sowby, Kent Karren, and Brent Lind, personally appeared before me, and after being duly sworn did say, that they are the members of the Board of Trustees of the Riverbirch Professional Park Planned Unit Development, and that the within and foregoing instrument was signed in behalf of said Trustees, and they did acknowledge to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand the 21 day of May 1998.



[Signature]  
NOTARY PUBLIC  
Residing at: [Signature]

My Commission Expires: