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**MASTER DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS
AND RESERVATION OF EASEMENTS
FOR
TRAVERSE MOUNTAIN
A MASTER PLANNED COMMUNITY**

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FOR
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**MASTER DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS
AND RESERVATION OF EASEMENTS
FOR
TRAVERSE MOUNTAIN**

This Master Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Traverse Mountain is made by MOUNTAIN HOME DEVELOPMENT, CORP., a Utah corporation, ("**Declarant**"). The capitalized terms used in the Preamble are defined in Article I.

P R E A M B L E:

A. The Declarant is the Owner of Phase 1, which is real property in Lehi City, County of Utah, Utah, described as follows:

B. Declarant and all of the Neighborhood Builders have agreed or will agree that all of the Residential Area will be developed with certain common objectives, and that Owners of Lots or Condominiums within the Residential Area will have certain common interests. The Residential Area, Multi-Family Area, Commercial Area and any other area of the Annexable Territory added to Properties will be developed with objectives designed to benefit all the property within the Properties, even though the areas are of different character. This common development scheme created by Declarant and the Neighborhood Builders imposes reciprocal burdens and benefits on all of the Properties.

C. Declarant deems it desirable, for the efficient preservation of the amenities in the Properties, to create a planned unit development in a master planned community. The general plan of development of the Properties will include forming a corporation pursuant to the Utah Revised Nonprofit Corporations Act to which will be assigned the powers of (1) owning, maintaining and administering the Master Association Property, (2) administering and enforcing the Governing Documents, and (3) collecting and disbursing Assessments. The Members of the Master Association will be the Owners of Lots and Condominiums in the Properties, as further provided in Article III of this Master Declaration.

D. Declarant declares that the Properties will be transferred, encumbered, leased, used and improved subject to this Master Declaration, which is for the purpose of enhancing the attractiveness and desirability of the Properties, in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Properties. The covenants, conditions, restrictions, reservations, easements and equitable servitudes in this Master Declaration will (1) run with and burden the Properties and be binding upon all Persons having

or acquiring any interest in the Properties, their heirs, successors and assigns; (2) inure to the benefit of the Properties and all interests therein; (3) inure to the benefit of and be binding upon Declarant, the Neighborhood Builders, and their respective successors-in-interest, each Owner and each Owner's successors in interest; and (4) may be enforced by Declarant, any Neighborhood Builder, any Owner and the Master Association.

INTRODUCTION TO THE PROPERTIES

Declarant has established this Master Declaration to provide a governance structure for the community in the Properties. The Master Association is the homeowners association formed to manage, maintain and govern the Properties. The Master Association's powers are described in Sections 3.2 and 3.3. The majority of the Master Association's business is overseen by its Board of Directors. Day-to-day activities are supervised by the Master Association's officers and the Community Manager. The Aesthetic Review Committee is a committee of the Master Association formed to have jurisdiction over design, development and aesthetics in the Properties.

Certain issues cannot be decided by the Board of Directors of the Master Association. Instead, these issues will be presented to the Neighborhood Representatives or the Members of the Master Association. The Neighborhood Representatives are elected by each of the Neighborhoods in the Properties. The Neighborhood Representatives' job includes informing Members who live in their Neighborhoods of various events and activities. Information about the Neighborhood Representatives' powers and duties as well as information about their election, term of office and decision-making procedure is contained in the Bylaws. Procedures for calling Member meetings are also contained in the Bylaws.

In addition to this Master Declaration, some Neighborhoods may also be governed by Neighborhood Declarations. These Neighborhood Declarations may impose additional restrictions on Lots or Condominiums in the affected Neighborhoods. The Neighborhood Declarations may also create Neighborhood Associations which will be operated pursuant to their own articles of incorporation and bylaws. The Neighborhood Associations may have their own Aesthetic Review Committees and may adopt their own design guidelines or Neighborhood rules and regulations. The Neighborhood Declarations, the management documents of Neighborhood Associations, and rules and regulations or architectural or landscaping guidelines of various Neighborhoods may supplement or be more restrictive than the Governing Documents so long as they are consistent with the scheme of governance established by the Governing Documents. However, if they conflict with the Master Declaration, the Master Declaration will be the controlling document.

To encourage a sense of community in the Properties, this Master Declaration provides for Special Benefit Areas as an alternative to the creation of multiple Neighborhood Associations. The Special Benefit Areas permit Neighborhoods to receive extra services or other benefits from the Master Association and to pay for these benefits above the basic level of the Common Assessments for the entire community.

The Master Declaration initially only encumbers the first Phase of the Properties. This is for a variety of reasons, some of which are as follows. Because the Properties could potentially include several thousand dwellings, planning issues involving these areas will not be resolved when Phase 1 is initially encumbered by the Master Declaration. Declarant does not wish to encumber property until its role as a part of the Properties can be precisely defined. Phased annexation to the Properties is consistent with phased construction and development. It is also accepted in the financial community as a way to minimize the impact of lender pre-sale requirements and enhance the financeability of the Properties. This is in accordance with the Development Agreement for the Properties, which specifically states that the timing of development, sequencing and phasing of land use areas shall be determined by the Declarant in its sole subjective business judgment and discretion. When completed, the Properties may include single family residences on Lots, Condominium projects managed by Neighborhood Associations, multi-family dwellings and, possibly even, commercial Lots or Condominiums, all of which will be developed in accordance with the Area Plan.

ARTICLE I DEFINITIONS AND INTERPRETATION

The following defined terms shown in bold have the meanings given in this Article and are subject to the limitations described in this Article.

1.1 **AESTHETIC REVIEW COMMITTEE.**

Aesthetic Review Committee means the Aesthetic Review Committee created pursuant to Article IV.

1.2 **ANNEXABLE TERRITORY.**

Annexable Territory means the real property described in *Exhibit A*, all or any portion of which may be made subject to this Master Declaration by following the procedure established in Article XVI.

1.3 **AREA PLAN.**

Area Plan means the entire bound volume with sequentially numbered pages on file with the City Planning Office. The Area Plan is composed of a cover letter, a map or plan entitled "Mountain Home Development Area Plan" and the Development Agreement. The Area Plan was approved by the City Counsel and then filed with the City Planning Office. The Area Plan may only be modified by amendments approved by Declarant and the City.

1.4 **ARTICLES.**

Articles mean the Articles of Incorporation of the Master Association as amended or restated. A copy of the initial Articles is attached as *Exhibit B*.

1.5 **ASSESSMENT.**

Assessment means any Common Assessment, Capital Improvement Assessment, Compliance Assessment or Reconstruction Assessment.

1.6 ASSESSMENT UNIT.

Assessment Unit means a unit of value assigned to Lots and Condominiums that is used to calculate each Lot and Condominium's share of Common Expenses and to establish the number of votes assigned to each Lot and Condominium. Some Lots and Condominiums may be assigned one (1) Assessment Unit, others may be assigned more Assessment Units and others may be assigned less than one Assessment Unit.

1.7 BENEFICIARY.

Beneficiary means a Mortgagee or beneficiary under a Mortgage or the assignees of such Mortgagee or Beneficiary identified in a Recorded assignment of rights under the Mortgage.

1.8 BOARD OR BOARD OF DIRECTORS.

Board or Board of Directors means the Master Association's Board of Directors.

1.9 BUDGET.

Budget means a written, itemized estimate of the Master Association's income and Common Expenses.

1.10 BYLAWS.

Bylaws mean the Bylaws of the Master Association initially in the form of *Exhibit C*, as amended or restated.

1.11 CAPITAL IMPROVEMENT ASSESSMENT.

Capital Improvement Assessment means a charge against the Owners and their Lots and Condominiums representing a portion of the cost to the Master Association for installing or constructing capital Improvements on the Master Association Property. Capital Improvement Assessments will be levied in the same proportion as Common Assessments.

1.12 CITY.

City means Lehi City, Utah, and its various departments, divisions, employees and representatives.

1.13 CLOSE OF ESCROW.

Close of Escrow means the date on which a deed is Recorded conveying a Lot or Condominium to a member of the public. The term "Close of Escrow" does not include the Recordation of a deed (i) between Declarant and (a) any successor to any rights of the Declarant or (b) any Neighborhood Builder, (ii) between Neighborhood Builders, (iii) conveying any portion of the Multi-Family Area, or (iv) conveying any portion of the Commercial Area.

1.14 COMMERCIAL AREA.

Commercial Area means the real property classified as a portion of the Commercial Area in a Supplemental Declaration, which is or will be developed with commercial or retail business Improvements.

1.15 COMMON AREA.

Common Area means land within the Properties (a) designated in a Neighborhood Declaration as "common area" as defined in Section _____ of the Utah _____ Code, or (b) owned or

maintained by a Neighborhood Association for the primary benefit of the Owners within the jurisdiction of the Neighborhood Association.

1.16 COMMON ASSESSMENT.

Common Assessment means a charge against the Owners and their Lots or Condominiums to be used to satisfy Common Expenses. Common Assessments are composed of a "General Assessment Component" and, possibly, a "Special Benefit Area Assessment Component," as provided in Section 7.4.

1.17 COMMON EXPENSES.

Common Expenses means those expenses for which the Master Association is responsible under this Master Declaration, including the actual and estimated costs of the following:

- Maintaining, managing and operating the Master Association Property;
- Unpaid Capital Improvement Assessments, Common Assessments, Compliance Assessments and Reconstruction Assessments;
- Any commonly metered utilities or other commonly metered charges not paid for by a Neighborhood Association;
- Managing and administering the Master Association;
- Compensation paid by the Master Association to managers, accountants, attorneys and Master Association employees and contractors;
- All utilities, landscaping, trash pickup and other services benefiting the Master Association Property;
- Maintaining address identification signs not provided for by a Neighborhood Association;
- Fire, casualty and liability insurance, worker's compensation insurance, and other insurance covering the Properties and the directors, officers and agents of the Master Association;
- Bonding the members of the Master Association Board of Directors, its officers and other representatives;
- Taxes paid by the Master Association;
- Amounts paid by the Master Association for discharge of any lien or encumbrance levied against the Properties;
- Reasonable reserves;

- Providing protective services for the Master Association Property or other portions of the Properties;
- Payments under contracts entered into by the Master Association;
- Expenses designated as Common Expenses in Supplemental Declarations;
- All other expenses incurred by the Master Association for any reason whatsoever in connection with the Properties, for the common benefit of the Owners.

1.18 **COMMUNITY GUIDELINES.**

Community Guidelines mean the Community Guidelines adopted, amended or restated by the Board.

1.19 **COMPLIANCE ASSESSMENT.**

Compliance Assessment means a charge against a particular Owner or Neighborhood Association directly attributable to or reimbursable by that Owner or Neighborhood Association equal to the cost incurred by the Master Association for corrective action performed pursuant to the Governing Documents, or a fine or penalty assessed by the Board, plus interest and other charges on such Compliance Assessments as provided for in the Governing Documents. Compliance Assessments may include any collection costs, expenses and reasonable attorneys' fees.

1.20 **CONDOMINIUM.**

Condominium means a condominium as defined in the Utah Condominium Ownership Act, Utah Code Ann., Section 57-8-1 *et seq.* as amended or any successor statute.

1.21 **DECLARANT.**

Declarant means MOUNTAIN HOME DEVELOPMENT, CORP., a Utah corporation, its successors and any Person to which it shall have assigned any rights hereunder by express written assignment. Any such assignment may include some or all of the rights of the Declarant and may be subject to such purposes, conditions or limits as MOUNTAIN HOME DEVELOPMENT, CORP. may impose in its sole and absolute discretion. As used in this Section, "successor" means a Person who acquires Declarant or substantially all of its assets, or who merges with Declarant, by sale, merger, reverse merger, consolidation, sale of stock or assets, operation of law or otherwise.

1.22 **DECLARANT'S NEIGHBORHOOD REPRESENTATIVE.**

Declarant's Neighborhood Representative means the Neighborhood Representative appointed by Declarant to represent Declarant and all Neighborhood Builders and to cast the Class A and Class B votes of the Declarant and all Neighborhood Builders.

1.23 **DEVELOPMENT AGREEMENT.**

Development Agreement means the Annexation and Development Agreement dated as of May 2, 1997, including Exhibits 1 through 4 thereto, originally entered into between Declarant's

predecessor in interest, Utah Valley Land Company, and the City. (As of April 14, 200, Utah Valley Land Company assigned its rights under the Development Agreement to Declarant.)

1.24 DESIGN GUIDELINES.

Design Guidelines mean the design standards, guidelines, procedures and rules adopted pursuant to Article IV.

1.25 FAMILY.

Family means (a) one Person or a group of natural Persons related to each other by blood, marriage or adoption, or (b) a group of natural Persons not all so related, but who are all part of a common household in a Residence.

1.26 FHA.

FHA means the Federal Housing Administration of the United States Department of Housing and Urban Development and its successors.

1.27 FHLMC.

FHLMC means the Federal Home Loan Mortgage Corporation created by Title II of the Emergency Home Finance Act of 1970, and its successors.

1.28 FISCAL YEAR.

Fiscal Year means the fiscal accounting and reporting period of the Master Association.

1.29 FNMA.

FNMA means the Federal National Mortgage Association, a government- sponsored private corporation established pursuant to Title VIII of the Housing and Urban Development Act of 1968, and its successors.

1.30 GNMA.

GNMA means the Government National Mortgage Association administered by the United States Department of Housing and Urban Development, and its successors.

1.31 GOVERNING DOCUMENTS.

Governing Documents mean this Master Declaration, all Supplemental Declarations, the Articles, Bylaws, the Design Guidelines and the Community Guidelines.

1.32 IMPROVEMENT.

Improvement means any structure, vegetation or appurtenance including buildings, walkways, irrigation systems, garages, roads, driveways, parking areas, fences, walls, stairs, decks, landscaping, antennae, the paint on all exterior surfaces, windbreaks, patio covers, railings, gates, poles, exterior air conditioning and water-softening fixtures or equipment. The Design Guidelines may identify additional items that are Improvements.

1.33 INCLUDES, INCLUDING.

Whether capitalized or not, includes and including mean "includes without limitation" and "including without limitation," respectively.

1.34 LOCAL GOVERNMENTAL AGENCY.

Local Governmental Agency means the City and any local, municipal or regional governmental entity or agency.

1.35 LOT.

Lot means a lot or parcel of land shown on a Recorded subdivision plat of any portion of the Properties, including any Lot in a Multi-Family Area or Commercial Area, but not the Master Association Property and the Common Area. Lot will also mean any portion of a lot or parcel of land designated as a Lot in a Supplemental Declaration.

1.36 MAINTAIN.

Whether capitalized or not, maintain means maintain, repair and replace.

1.37 MAINTENANCE FUNDS.

Maintenance Funds mean the accounts created for the Master Association receipts and disbursements pursuant to Article VII.

1.38 MANAGER.

Manager means the Person who provides professional community management for the Master Association.

1.39 MASTER ASSOCIATION.

Master Association means the Traverse Mountain Master Association, a Utah nonprofit corporation, its successors and assigns.

1.40 MASTER ASSOCIATION PROPERTY.

Master Association Property means all the real property and Improvements, whether annexed to the Properties or not, which are owned in fee simple by the Master Association, or for which the Master Association has rights or obligations by easement, lease, encroachment permit, license or other agreement. Master Association Property may include areas on public property designated by a Local Government Agency for maintenance by the Master Association pursuant to this Master Declaration, any Supplemental Declaration, any agreement or Recorded plat. The Master Association Property in Phase 1 includes the property described or depicted on *Exhibit D*. Additional Master Association Property may be annexed to the Properties pursuant to Article XVI.

1.41 MASTER DECLARATION.

Master Declaration means this entire instrument, and its exhibits, as amended or restated.

1.42 MEMBER.

Member means any Person owing a Membership and the Declarant.

1.43 MEMBERSHIP.

Membership means the property, voting and other rights and privileges, duties and obligations of Members.

1.44 MORTGAGE.

Mortgage means any instrument Recorded against one or more Lots, Condominiums, or other portions of the Properties to secure the performance of an obligation and includes a mortgage and a deed of trust.

1.45 MORTGAGEE.

Mortgagee means a Person to whom a Mortgage is made and includes the beneficiary of a deed of trust.

1.46 MULTI-FAMILY AREA.

Multi-Family Area means the real property classified as a portion of the Multi-Family Area in this Master Declaration or in a Supplemental Declaration, which is or will be developed with Improvements suitable for multi-Family rental apartment use.

1.47 NEIGHBORHOOD.

Neighborhood means an area in the Properties in which a single Neighborhood Representative represents the voting power of all Members owning Lots or Condominiums within such area, except Declarant and Neighborhood Builders. As each portion of the Annexable Territory is added to the Properties, the Supplemental Declaration adding the property will identify the Neighborhood to which the property is assigned.

1.48 NEIGHBORHOOD ASSOCIATION.

Neighborhood Association means any Utah corporation or unincorporated association, or its successor, established in connection with a Neighborhood Declaration, the membership of which is composed of Owners of Lots or Condominiums within a portion of the Properties. The Master Association is not a Neighborhood Association.

1.49 NEIGHBORHOOD BUILDER.

Neighborhood Builder means a Person designated by Declarant as a Neighborhood Builder in a Recorded document. Some of the Persons Declarant intends to designate as Neighborhood Builders are Persons who acquire a portion of the Properties for the purpose of (i) developing such portion for resale to the general public, or (ii) in the case of a Multi-Family Area or Commercial Area, developing such portion for sale, lease, investment or occupancy. Upon the first occupancy of a building in a Multi-Family Area and a Commercial Area, the owner of the building ceases to be a Neighborhood Builder for purposes of that building. The term "Neighborhood Builder" does not include Declarant.

1.50 NEIGHBORHOOD DECLARATION.

Neighborhood Declaration means any declaration of covenants, conditions and restrictions which affects solely a portion of the Properties. Neither the Master Declaration nor a Supplemental Declaration is a Neighborhood Declaration.

1.51 NEIGHBORHOOD REPRESENTATIVE.

Neighborhood Representative means both (i) Declarant's Neighborhood Representative, and (ii) each Person selected pursuant to the Bylaws to represent and vote on behalf of all of the Members in a Neighborhood (except Declarant and the Neighborhood Builders).

1.52 NOTICE AND HEARING.

Notice and Hearing means written notice and a hearing before the Board as provided in the Bylaws and this Master Declaration.

1.53 OWNER.

Owner means the Person or Persons, including Declarant and the Neighborhood Builders, holding fee simple interest of record to any Condominium or Lot. The term "Owner" includes a seller under an executory contract of sale but excludes Mortgagees. A Supplemental Declaration may change the definition of the term "Owner" as it applies to a Neighborhood. For example, the term "Owner" may include a ground lessee under a long-term ground lease if so designated in the Supplemental Declaration for such property.

1.54 PERSON.

Person means a natural individual or any entity with the legal capacity to hold title to real property.

1.55 PHASE.

Phase means any one of the following: (i) Phase 1, (ii) any portion of the Properties defined a Phase in a Supplemental Declaration.

1.56 PHASE 1.

Phase 1 means all of the real property described in Paragraph A of the Preamble of this Master Declaration and the Master Association Property described or depicted on *Exhibit D*.

1.57 PROPERTIES.

Properties mean all of the real property encumbered by this Master Declaration, which is (a) Phase 1, (b) each Phase described in a Supplemental Declaration, and (c) any other property encumbered by the Master Declaration. References in this Master Declaration to the Properties are to the Properties as a whole and to portions of the Properties.

1.58 RECONSTRUCTION ASSESSMENT.

Reconstruction Assessment means a charge against the Owners and their Lots or Condominiums representing a portion of the Master Association's cost to reconstruct any Improvements on the Master Association Property. Reconstruction Assessments will be levied in the same proportion as Common Assessments.

1.59 RECORD OR FILE.

Record or File means, with respect to any document, entry of such document in the records of the Recorder for the County.

1.60 RESERVES.

Reserves mean Master Association funds set aside for funding periodic painting and maintaining of the components of the Master Association Property which would not reasonably be expected

to recur on an annual or more frequent basis and for payment of deductible amounts for insurance policies which the Master Association obtains. The amount of Reserves will be determined annually by the Board pursuant to reserve cost guidelines established in accordance with prudent property management practices.

1.61 RESIDENCE.

Residence means the structure intended for use and occupancy by one Family and located in a unit of an apartment building in a Multi-Family Area, on a Lot in the Residential Area or in the unit of a Condominium in the Residential Area.

1.62 RESIDENTIAL AREA.

Residential Area means the real property which is so classified in this Master Declaration or a Supplemental Declaration. The Residential Area is designated for development as Lots or Condominiums. The Residential Area may include Master Association Property as well as Common Area.

1.63 SPECIAL BENEFIT AREA.

Special Benefit Area means a group of Lots or Condominiums that share the costs of either (i) maintaining specified Improvements, or (ii) receiving certain services. The additional administrative costs of administering each Special Benefit Area shall be a part of the Common Expenses allocated to the Special Benefit Area Component of Common Assessments. Special Benefit Areas may be identified by Declarant in this Master Declaration or any Supplemental Declaration when Declarant, in its sole discretion, determines that a group of Lots or Condominiums benefits more from the specified Improvements or services than the Properties as a whole. The Board may also identify Special Benefit Areas as authorized in this Master Declaration or a Supplemental Declaration.

1.64 SUPPLEMENTAL DECLARATION.

Supplemental Declaration means an instrument Recorded to annex additional real property to the Properties or to supplement this Master Declaration, as such instrument is amended or restated.

1.65 TELECOMMUNICATIONS FACILITIES.

Telecommunication Facilities means equipment, fiber optics, cables, conduits, inner ducts, vaults, connecting hardware, wires, poles, transmitters, antennae and other facilities and structures necessary for, or used in, the provision of Telecommunication Services.

1.66 TELECOMMUNICATIONS SERVICES.

Telecommunications Services means Telecommunication Facilities, Improvements, and services for cable television, communications, telecommunications, antenna, high-speed data, telephony and all related vertical services, intranet, internet, information transfer (including wireless transfer), transmission, video and other similar services. Declarant may expand this definition in any Supplemental Declaration.

1.67 TMCS.

TMCS means Traverse Mountain Community Services, a Utah nonprofit corporation, its successors and assigns. TMCS is formed for the purpose of providing community services to the Properties.

1.68 VA.

VA means the Department of Veterans Affairs of the United States of America and its successors.

1.69 INTERPRETATION.

1.69.1 **General Rules.**

This Master Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a master planned community and for the maintenance of the Master Association Property. Any violation of this Master Declaration is a nuisance. The Governing Documents shall be interpreted so as to be consistent with applicable laws and regulations, including ordinances and regulations of the appropriate Local Governmental Agencies. The Article and Section headings are for convenience only, and may not be considered or referred to in resolving questions of interpretation or construction. As used in this Master Declaration, the singular includes the plural and the plural the singular; and the masculine, feminine and neuter each include the other, unless the context dictates otherwise. Except as otherwise expressly provided in this Master Declaration, any reference in this Master Declaration to time for performance of obligations or to elapsed time means consecutive calendar days, months, or years, as applicable. *Exhibits A, D and E* are incorporated in this Master Declaration by this reference. All references made in this Master Declaration to statutes are to those statutes as amended or restated or to subsequently enacted replacement statutes. Unless otherwise indicated, references to Articles, Sections and Exhibits are to Articles, Sections and Exhibits of this Master Declaration.

1.69.2 **Statements in Italics.**

The portions of the Governing Documents printed in italics are provided as simplified, general explanations of the purposes of the Articles, Sections or paragraphs of the Governing Documents and the scheme of governance for the Properties. The statements in italics are provided for convenience and may not be considered in resolving questions of interpretation or construction of the Governing Documents.

1.69.3 **Intent of Declarant.**

Declarant intends that the Properties be developed for one-Family residential, multi-Family residential apartment uses, commercial uses and other uses defined in Supplemental Declarations, all consistent with this Master Declaration and any applicable Supplemental Declarations. In addition, Declarant, at its option, may designate areas for maintenance, recreational, institutional or other purposes.

1.69.4 **Relationship to Other Declarations.**

As each Phase is developed, Declarant or Declarant and a Neighborhood Builder may Record one (1) or more Supplemental Declarations which may designate the use classifications within the areas affected and which may supplement this Master Declaration with such additional covenants, conditions, restrictions and easements as Declarant may deem appropriate for the real property being annexed thereby. The provisions of any Supplemental Declaration may impose such additional, different or more restrictive conditions, covenants, restrictions, easements and limits as Declarant may deem advisable, taking into account the particular requirements of each Phase. If there is any conflict between any Supplemental Declaration and the Master

Declaration, the Supplemental Declaration shall control with respect to the real property annexed by such Supplemental Declaration. If there is any conflict between any Neighborhood Declaration and the provisions of the Master Declaration or applicable Supplemental Declaration, the Master Declaration and applicable Supplemental Declaration shall control.

1.69.5 Relationship to Other Governing Documents.

If there are conflicts or inconsistencies between this Master Declaration and the Articles, Bylaws, Design Guidelines or Community Guidelines then the provisions of this Master Declaration shall prevail.

1.69.6 Relationship of Development Agreement to Area Plan and Other Planning Documents.

The Governing Documents do not transfer to the Members or the Master Association any rights acquired by Declarant pursuant to the Area Plan and/or the Development Agreement; all of these rights are retained by Declarant. Declarant has the right to pursue to completion any electric energy facilities, improvements, roads and/or infrastructure that Declarant deems necessary to benefit Declarant and to entitle and allow Declarant to realize the full potential of the 2650 acres that front the Alpine Highway (SR-92) and that are owned by Declarant in Lehi City. This provision cannot be altered or amended except in writing that is approved by the City and the Declarant, and this provision supersedes all other documents, agreements and ordinances related thereto.

1.69.7 Severability.

The provisions hereof are independent and severable, and a determination of invalidity or partial invalidity or unenforceability of any one provision or portion hereof by a court of competent jurisdiction does not affect the validity or enforceability of any other provision.

ARTICLE II RESIDENTIAL AREA USE RESTRICTIONS

This Article establishes limits on the use of Lots and Condominiums in the Residential Area. The Master Association has the power to enforce the use restrictions. Potential purchasers of Lots and Condominiums in the Residential Area should read these use restrictions closely to make sure they can use their property as they intend, without violating these use restrictions. In some cases, the Master Association is given the power to delegate its authority to enforce certain use restrictions to the Owners or to Neighborhood Corporations. This is to allow the Master Association to limit the scope of its involvement in matters that the Master Association determines are best resolved by neighbors and in matters where a competent third party (the Neighborhood Corporation) is available to address the grievance. However, if the Master Association determines that the neighbors or Neighborhood Corporation are not dealing with issues adequately, the Master Association can revoke its delegation of powers and regain control over enforcement of all of the use restrictions. Some of the use restrictions apply not only to the Properties, but to public areas adjacent to the Properties. This is to prevent Owners and occupants from circumventing the use restrictions by placing items that are prohibited in the Properties (such as an unsightly, inoperable vehicle) on adjacent public property and leaving other Lots and Condominiums that are negatively impacted without a remedy.

The Residential Area shall be held, used and enjoyed subject to the following restrictions. Real property added to the Properties that is not part of the Residential Area is exempt from the restrictions established in this Article unless the Supplemental Declaration annexing the property to the Properties indicates that the property being annexed is subject to the restrictions in this Article. Neighborhood Declarations may establish supplementary or more restrictive use restrictions for the property the Neighborhood Declarations encumber so long as the restrictions are consistent with the scheme of governance established in the Master Declaration and any applicable Supplemental Declaration. Supplemental Declarations may add use restrictions or replace the use restrictions contained in this Article for the property the Supplemental Declarations encumber.

2.1 SINGLE FAMILY OCCUPANCY.

Each Residence shall be used only for (a) residential purposes, or (b) business or commercial activities authorized by this Section. An Owner may rent his Residence to a single Family provided that the Residence is rented pursuant to a lease or rental agreement which is (a) in writing and (b) subject to all of the provisions of the Governing Documents. Residences may be used for business or commercial activities so long as the following requirements are met:

2.1.1 Compliance With Law.

The activities are conducted in conformance with all applicable Local Governmental Agency ordinances, including the Area Plan and the City Code;

2.1.2 Streets and Parking Areas.

The patrons or clientele do not overburden the streets or parking areas in the Properties, considering the streets and parking areas are a part of a residential community, not a commercial development;

2.1.3 Exterior Effects.

The existence or operation of such activities does not produce sounds, odors or materials outside the boundaries of the Lot, Condominium or Neighborhood Property that are excessive or inappropriate for a residential community;

2.1.4 Insurance.

The activity does not increase the Master Association's liability or casualty insurance obligation or premium; and

2.1.5 Consistent.

The activities are consistent with the character of the Residential Area and the Properties as a whole and conform to the other provisions of this Master Declaration.

Offices operated by (i) the manager of a Neighborhood Corporation for the sole purpose of managing the Neighborhood Corporation, (ii) TMCS, and (iii) the Master Association, are exempt from the restrictions contained in this Section.

Except as authorized in this Section 2.1, no part of the Residential Area may be used for any business, commercial (including auctions or similar events), manufacturing, mercantile, storage, vending or other nonresidential purposes, including any activity for which the provider is

compensated or receives any consideration, regardless of whether the activity is engaged in full or part-time, generates or does not generate a profit, or requires or does not require a license.

2.2 NUISANCES.

No noxious or offensive activities may be carried on upon the Properties or on any public street abutting or visible from the Properties. No Owner may (a) permit or cause anything to be done or kept on the Properties or on any public street abutting the Properties which may (i) increase the rate of insurance in the Properties, (ii) result in the cancellation of such insurance, or (iii) obstruct or interfere with the rights of other Owners, or (b) commit or permit any nuisance thereon or violate any law. Each Owner shall comply with all requirements of the local or state health authorities and with all other applicable governmental ordinances regarding occupancy and use of a Condominium or Lot, including the Residence thereon. Each Owner is accountable to the Master Association and other Owners for the conduct and behavior of Persons residing in or visiting his Lot or Condominium. The Master Association has the power to require that any damage to the Master Association Property, personal property of the Master Association, or property of another Owner caused by such Persons shall be repaired at the sole expense of the Owner of the Lot or Condominium where such Persons are residing or visiting. The Master Association is entitled to determine if any noise, odor, or activity producing such noise or odor constitutes a nuisance. The Board has the right to delegate responsibility for enforcing any of the restrictions on nuisances contained in this Section to the Owners or Neighborhood Associations.

2.3 SIGNS.

All signs, posters, billboards, balloon advertising devices and other displays of any kind must comply with the Area Plan and City Code. In addition, they shall not be displayed within the Properties except as follows:

2.3.1 Declarant and Neighborhood Builder Signs.

Signs of any size or configuration used by Declarant or the Neighborhood Builders in connection with the development of the Properties and the sale, lease or other disposition of Lots, Condominiums and the Annexable Territory;

2.3.2 Entry Monuments.

Entry monuments and similar community identification signs either maintained by the Master Association or approved by the Aesthetic Review Committee and maintained by the Neighborhood Associations;

2.3.3 Lots or Condominiums.

Subject to the Design Guidelines, one (1) nameplate or similar Owner name identification, and one (1) sign advising of the existence of security services protecting a Lot or Condominium;

2.3.4 Sale or Lease.

One (1) sign which may be displayed on each Lot or Condominium advertising the Lot or Condominium for sale or lease; however, such sign must comply with the Community Guidelines and Design Guidelines; and

2.3.5 Other Approved Displays.

Other displays such as decorative flags or holiday displays authorized in the Community Guidelines.

2.4 **PARKING AND VEHICULAR RESTRICTIONS.**

The Master Association may delegate the responsibility for enforcing the restrictions in this Section to any Neighborhood Association. If the Master Association notifies a Neighborhood Association that the Master Association has delegated its responsibilities, the Neighborhood Association must enforce these restrictions as they apply to the property subject to the Neighborhood Association's jurisdiction. If a Neighborhood Association fails to enforce these restrictions, the Master Association may revoke the delegation or impose a Compliance Assessment on the Neighborhood Association.

2.4.1 **Authorized Vehicles.**

The following vehicles are Authorized Vehicles: standard passenger vehicles, including automobiles, passenger vans designed to accommodate ten (10) or fewer people, motorcycles and pick-up trucks having a manufacturer's rating or payload capacity of one (1) ton or less. Authorized Vehicles may be parked in any portion of the Properties intended for parking of motorized vehicles, subject to the restrictions in the other portions of the Governing Documents. No Owner may park any vehicle in a manner which the Master Association determines unreasonably extends beyond the boundaries of a parking space or into streets or sidewalks within the Properties. The Master Association has the power to identify additional vehicles as Authorized Vehicles.

2.4.2 **Restricted Vehicles.**

The following vehicles are Restricted Vehicles:

- (i) recreational vehicles (e.g., motor homes, travel trailers, camper vans, snowmobiles and boats),
- (ii) commercial-type vehicles (e.g., stake bed trucks, tank trucks, dump trucks, step vans, concrete trucks, and limousines),
- (iii) buses or vans designed to accommodate more than ten (10) people (unless the vehicle is operated by the Master Association or a Neighborhood Association),
- (iv) vehicles having more than two (2) axles,
- (v) trailers, inoperable vehicles or parts of vehicles,
- (vi) aircraft,
- (vii) other similar vehicles, or
- (viii) any vehicle or vehicular equipment deemed a nuisance by the

Board.

Restricted Vehicles may not be parked, stored or kept on any public or private street within, adjacent to or visible from the Properties or any other Master Association Property parking area unless (a) they are owned and used by the Master Association, TMCS or a Neighborhood Association, (b) they are parked for limited periods in specified locations, as authorized in the Community Guidelines, or (c) they are parked within an Owner's fully enclosed garage with the door closed. If a vehicle qualifies as both an Authorized Vehicle and a Prohibited Vehicle, then the vehicle is presumed to be a Prohibited Vehicle, unless the vehicle is expressly classified as an Authorized Vehicle in writing by the Board. The Master Association has the power to identify additional vehicles as Restricted Vehicles. Some areas of the Properties may be developed so that Prohibited Vehicles may be stored on Lots. These areas may be exempted from this restriction in the Supplemental Declarations for the areas. Supplemental Declarations may establish additional or different restrictions on parking Prohibited Vehicles.

2.4.3 General Restrictions.

All vehicles owned or operated by or within the control of an Owner or a resident of an Owner's Lot or Condominium and kept within the Properties must be parked in the assigned carport, parking space or garage of that Owner to the extent of the space available. Each Owner shall ensure that any such carport, parking space or garage accommodates at least the number of Authorized Vehicles for which it was originally constructed by Declarant or a Neighborhood Builder. No repair, maintenance or restoration of any vehicle may be conducted on the Properties except as authorized by the Community Guidelines, provided such activity is not undertaken as a business, and provided that such activity may be prohibited entirely by the Board if the Board determines that it constitutes a nuisance.

2.4.4 Parking and Street Regulations.

The Board may establish regulations in the Community Guidelines regarding any private streets and parking areas not assigned to individual Lots or Condominiums. These regulations may include setting speed limits, restricting types of vehicles that may be used in different areas, designating "parking," "guest parking," "temporary Owner parking" and "no parking" areas, setting time limits for parking vehicles in the Master Association Property parking areas, and requiring registration of vehicles or use of parking permits. The Master Association has the power to enforce all parking and vehicle use regulations applicable to the Properties, including removing violating vehicles from the Properties without advance notice to the owner of the vehicle. Nothing in this Section 2.4 shall be construed as prohibiting enforcement of City Code and Area Plan parking restrictions by the City.

2.5 ANIMAL RESTRICTIONS.

The only pets that may be raised, bred or kept in the Residential Area are animals that comply with the Area Plan and the City Code and that are either (i) domestic dogs, cats, fish, birds and other usual household pets, or (ii) animals authorized to be kept on the Properties in the Community Guidelines. Animals cannot be raised, bred or kept for commercial purposes in violation of the Governing Documents. The Board may prohibit any pet which, in the Board's opinion, constitutes a nuisance. Animals within the Properties must be either kept within an enclosure or on a leash held by a Person capable of controlling the animal. Any Person shall be liable to each and every other Person for any unreasonable noise or damage to Person or property caused by any pets brought or kept upon the Properties by such Person. Persons shall clean up after their pets use any portion of the Properties or public street abutting or visible from the

Properties. Any Person who keeps any animal, insect or reptile within the Properties, whether in compliance with or in violation of the Governing Documents, shall indemnify, defend and hold harmless the Master Association, its officers, directors, contractors, agents and employees from any claim brought by any Person against the Master Association, its officers, directors, agents and employees for personal injuries or property damage caused by such animal, insect or reptile. The Master Association may elect to only enforce this Section in connection with the Master Association Property, leaving for the Owners or the Neighborhood Associations the power to enforce this Section as it applies to other areas of the Properties.

2.6 EXTERIOR ITEMS.

Weeds, rubbish, debris, items designated as unsightly in the Community Guidelines and trash may not be kept or permitted upon the Properties or on any public area abutting or visible from the Properties. Trash may be kept in sanitary containers located in appropriate areas screened from view in accordance with the Community Guidelines and Design Guidelines, and no odor may be permitted to arise therefrom so as to render the Properties or any portion thereof unsanitary, offensive or detrimental to any other property in the vicinity thereof or to its occupants. Trash containers for individual Owners may be exposed to view only when set out for a reasonable period of time not to exceed twelve (12) hours before and after scheduled trash collection hours. Trash containers for Neighborhood Associations may be kept on Common Area so long as they are contained within an enclosure installed by Declarant or a Neighborhood Builder or approved by the Aesthetic Review Committee. No exterior fires are permitted, except barbecue fires contained within receptacles therefore and fire pits in enclosed areas and designed so that they do not create a fire hazard.

2.7 TEMPORARY BUILDINGS.

Outbuildings, tents, shacks, or other temporary buildings or Improvements may not be placed upon any portion of the Properties, without the prior written consent of the Aesthetic Review Committee. Garages, carports, trailers, campers, motor homes, recreation vehicles or other vehicles may not be used as residences in the Properties.

2.8 MASTER ASSOCIATION PROPERTY.

Owners or Neighborhood Associations shall not alter the Master Association Property without the prior written consent of the Board.

2.9 INSTALLATIONS.

Projections of any type, except those allowed in this Master Declaration, are not permitted above the roof of any building within the Properties, except chimneys and vent stacks originally installed, by Declarant or a Neighborhood Builder in the rear of the home. Portable and fixed basketball backboard and other sports apparatus are subject to regulation by the Community Guidelines. No fence or wall may be erected, altered or maintained around any Residence or on any Lot except with the Aesthetic Review Committee's prior approval. No patio cover, wiring, or air conditioning fixture, or other devices may be installed on the exterior of a Residence or be allowed to protrude through the walls or roof of the Residence except those items installed during the original construction of the Residence without the Aesthetic Review Committee's prior written approval. The Master Association has the power to prohibit or restrict use of aluminum foil, newspaper, paint, reflective tint or any other material as window coverings.

2.10 ANTENNAE.

Owners and Neighborhood Associations are prohibited from placing any Telecommunications Facilities, or from permitting any Telecommunications Facilities to be placed, on any portion of the Properties for any purpose, except for an "Authorized Antenna," which may be installed so long as the proposed location for such installation is reviewed by the Aesthetic Review Committee before installation to ensure that the visibility of the Authorized Antenna is minimized with respect to other Owners. The Aesthetic Review Committee may require that the location of the Authorized Antenna be moved so long as such review by the Aesthetic Review Committee does not (a) unreasonably delay or prevent installation, maintenance or use of an Authorized Antenna, (b) unreasonably increase the cost of installation, maintenance or use of an Authorized Antenna, or (c) preclude acceptable quality reception.

An "Authorized Antenna" means (i) an antenna designed to receive direct broadcast satellite service, including direct-to-home satellite service, that is one meter or less in diameter, (ii) an antenna that is designed to receive video programming service, including multi-channel multipoint distribution service, instructional television fixed service, and local multipoint distribution service, that is one meter or less in diameter or diagonal measurement, (iii) an antenna designed to receive television broadcast signals, or (iv) a mast supporting an antenna described in items (i), (ii) and (iii) above. The Board has the power to designate additional types of Authorized Antenna in the Community Guidelines.

So long as the Owner consents, a person residing in the Owner's Residence with the Owner's permission ("**Resident**") shall have the same rights as the Owner concerning the installation or use of an Authorized Antenna under this Section. The Aesthetic Review Committee may request proof of the Owner's consent before approving a Resident's application for installation of an Authorized Antenna.

Notwithstanding anything apparently to the contrary in this Section 2.10, the Master Association may adopt additional restrictions on installation or use of an Authorized Antenna on an Owner's Residence as a part of the Master Association's Community Guidelines so long as such restrictions do not (1) unreasonably delay or prevent installation, maintenance or use of an Authorized Antenna, (2) unreasonably increase the cost of installation maintenance or use of an Authorized Antenna, or (3) preclude acceptable quality reception. The Master Association may prohibit the installation of an Authorized Antenna if the installation, location or maintenance of such Authorized Antenna unreasonably affects the safety of managers, agents or employees of the Master Association, any Neighborhood Association and other Owners, or for any other safety-related reason established by the Master Association.

The Master Association may also (A) prohibit an Owner from installing an Authorized Antenna on property which such Owner does not own or is not entitled to exclusively use or control under the Governing Documents, or (B) allow an Owner to install an antenna other than an Authorized Antenna subject to the Design Guidelines and review by the Aesthetic Review Committee.

This Section is intended to be a restatement of the authority granted to the Master Association under applicable law. All amendments, modifications, restatements and

interpretations of the law applicable to the installation, use or maintenance of an antenna shall be interpreted to amend, modify, restate or interpret this Section.

2.11 DRILLING.

No oil drilling, oil, gas or mineral development operations, oil refining, geothermal exploration or development, quarrying or mining operations of any kind may be conducted upon the Properties, nor are oil wells, tanks, tunnels or mineral excavations or shafts permitted upon the surface of any Lot or below the surface of the Properties. Except as required for development of City water sources, no derrick or other structure designed for use in boring for water, oil, geothermal heat or natural gas may be erected, maintained or permitted in the Properties.

2.12 LEASES AND TIMESHARES.

Except as otherwise provided in this Master Declaration, no Owner may further partition or subdivide his Lot or Condominium, including any division of such Owner's Lot or Condominium into time-share estates or time-share uses. This provision does not limit the right of an Owner to (a) rent or lease his entire Lot or Condominium by means of a written lease or rental agreement subject to the Governing Documents; (b) sell such Owner's Lot or Condominium; or (c) transfer or sell any Lot or Condominium to more than one Person to be held by them as tenants-in-common, joint tenants, tenants by the entirety or as community property. Any failure by the lessee of any Lot or Condominium to comply with the Governing Documents constitutes a default under the lease or rental agreement.

2.13 DRAINAGE.

Rain gutters, down spouts, drainage systems or the established drainage pattern for a Lot, Condominium or Common Area originally installed or established by Declarant or a Neighborhood Builder, may not be altered or interfered with unless an adequate alternative provision is made with the Board's prior written approval, which must be consistent with the geotechnical report produced for each development pod identified in the Area Plan. "Established" drainage means the pattern and drainage Improvements which exist at the time that such Lot, Condominium or Common Area is conveyed to a purchaser or Neighborhood Association from Declarant or a Neighborhood Builder, and includes drainage from the Lots, Condominiums and Common Area and Master Association Property onto adjacent Lots, Condominiums, Common Area and Master Association Property.

2.14 WATER SUPPLY SYSTEMS.

Individual water supply or water softener systems are prohibited on any Lot or in any Condominium unless such system is designed, located, constructed and equipped in accordance with the requirements of any applicable water district, and all other Local Governmental Agencies with jurisdiction.

2.15 VIEW OBSTRUCTIONS.

Each Owner acknowledges that any construction or installation by Declarant, any Neighborhood Builder or the Master Association may impair the view of such Owner and consents to such impairment. Each Owner acknowledges that there are no guaranteed views within the Properties, and no Lot or Condominium is assured the existence or unobstructed continuation of any particular view unless a Supplemental Declaration specifically provides otherwise.

2.16 SOLAR ENERGY SYSTEMS.

Each Owner may install a solar energy system which serves his Lot or Condominium so long as (a) the design and location of the solar energy system meet the requirements of all applicable governmental ordinances, (b) said design and location receive the prior written approval of the Aesthetic Review Committee and (c) the solar energy system complies with the Governing Documents, as amended from time to time.

2.17 URBAN WILDLIFE INTERFACE CODE COMPLIANCE.

The Master Association will be responsible for complying with Urban Wildlife Interface Code requirements imposed on the Master Association Property. Phase 1 is not subject to the Urban Wildlife Interface Code. Areas subject to the Urban Wildlife Interface Code ("**Protected Areas**") will be designated on exhibits to Supplemental Declarations. Construction or maintenance of structural Improvements in the Protected Areas, construction or maintenance of any combustible structural Improvements on or adjacent to the Protected Areas and installation, maintenance or modification of any landscaping Improvements in the Protected Areas which are inconsistent with any landscape palette required by the City are prohibited. City setback requirements must also be complied with.

2.18 INSTALLATION OF FRONT YARD LANDSCAPING.

If any landscaping on a Lot has not been installed by Declarant or a Neighborhood Builder, each Owner shall submit landscaping plans to the Aesthetics Review Committee within the time frame set in the Aesthetics Standards and complete the installation of any landscaping in accordance with a plan approved by the Aesthetics Review Committee within the time frame set in the Aesthetics Standards.

ARTICLE III THE MASTER ASSOCIATION

The success of the community is dependent upon the support and participation of each Owner in its governance and administration. This Master Declaration and the Master Association's Articles of Incorporation and Bylaws establish the Master Association as the mechanism through which each Owner is able to provide that support and participation. This Article briefly describes the organization of the Master Association, its powers, duties, authorized activities and prohibited activities. (These items are spelled out in detail in the Master Association's Articles of Incorporation and Bylaws.) This Article also identifies the standards of care used to govern the Properties.

3.1 ORGANIZATION.

The homeowners association organized to manage and maintain the Properties is or shall be incorporated under the name of "Traverse Mountain Master Association," as a corporation not for profit organized under the Utah Revised Nonprofit Corporation Act.

3.2 DUTIES AND POWERS.

The Master Association has the duties and powers set forth in the Articles, Bylaws, this Master Declaration and the Supplemental Declarations, which include the general and implied powers of a nonprofit corporation, generally to do all things that a corporation organized under the laws of

the State of Utah may lawfully do which are necessary or proper in operating for the peace, health, comfort, safety and general welfare of its Members, subject only to the limit upon the exercise of such powers set forth in the Articles, Bylaws, this Master Declaration and the Supplemental Declarations. All of the Master Association's powers shall be exercised by its Board of Directors except those powers reserved in specific provisions of the Articles, Bylaws, this Master Declaration or the Supplemental Declarations to the Members, Neighborhood Representatives or Aesthetic Review Committee.

3.3 SPECIFIC DUTIES AND POWERS.

In addition to its general powers and duties, the Master Association has the specific powers and duties listed in the Articles and Bylaws, some of which are summarized below.

3.3.1 Master Association Property.

The power and duty to accept, maintain and manage the Master Association Property.

3.3.2 Sewers and Storm Drains.

The power and duty to maintain any private sewer systems and any private storm drains or drainage facilities within the Master Association Property if the drains and systems are not maintained by a Neighborhood Association, a Local Governmental Agency or a utility company.

3.3.3 Utilities.

The power and duty to obtain, for the benefit of the Properties, all commonly metered water, gas and electric services, and the power but not the duty to provide for refuse collection and other utilities serving Lots and Condominiums if the utilities are not individually metered and are not obtained by a Neighborhood Association.

3.3.4 Granting Rights.

The power to grant exclusive or nonexclusive easements, licenses, rights of way or fee interests in portions of the Master Association Property, to the extent any such grant is reasonably required (i) for public or private utilities facilities to serve the Master Association Property, Common Area and the Lots or Condominiums, (ii) for purposes of conformity with the as-built location of Improvements installed by Declarant or Neighborhood Builders, (iii) in connection with any lawful lot line adjustment, (iv) for purposes consistent with the intended use of the Properties as a master planned community, or (v) for any other purpose permitted under this Master Declaration. Any easement grants made pursuant to this Section shall not interfere with previously designated utility easements. The Board may deannex Master Association Property from the encumbrance of the Master Declaration in connection with any lot line adjustment.

3.3.5 Telecommunications Contracts.

The Board shall have the power to enter into, accept an assignment of, or otherwise cause the Master Association to comply with the terms and provisions of an exclusive telecommunications services contract ("*Telecommunications Contract*") with a telecommunications service provider ("*Service Provider*"), pursuant to which the Service Provider shall serve as the exclusive provider of Telecommunications Services to each Apartment, Condominium and Lot in the Properties.

3.3.6 Right of Entry.

The power but not the duty to enter upon any Lot, Condominium or Common Area, as necessary, for the purpose of inspecting any portion of the Properties and to enforce the Governing Documents.

3.4 COMMENCEMENT OF MASTER ASSOCIATION MAINTENANCE OBLIGATIONS.

3.4.1 General Rule.

The Master Association's obligation to maintain the Master Association Property shall commence on conveyance of such property to the Master Association. The initial nature, design, quantity, quality and all other attributes of the Master Association Property shall be determined (i) in Declarant's sole and absolute discretion, or (ii) by a Neighborhood Builder which owns or controls the Master Association Property with Declarant's written consent.

3.4.2 Offers of Dedication.

Portions of the Master Association Property may be or become subject to an unaccepted offer of dedication to a Local Governmental Agency. Master Association Property subject to such offers of dedication shall be maintained by the Master Association in the same manner as all other Master Association Property until the offer of dedication is accepted. Once the dedication is accepted, (i) the dedicated Master Association Property shall be maintained by the accepting Local Governmental Agency pursuant to the offer of dedication, and (ii) the dedicated Master Association Property shall no longer constitute a part of the Master Association Property.

3.5 CONVEYANCE OF MASTER ASSOCIATION PROPERTY.

For Phase 1, conveyance of the Master Association Property shall occur prior to the first Close of Escrow in the Residential Area. Within every other Phase, conveyance of any Master Association Property to the Master Association therein shall occur (i) for Residential Areas, before the first Close of Escrow for a Lot or Condominium in such Phase, or (ii) for a Multi-Family Area, before the later to occur of (a) the first to occur of issuance of a certificate of occupancy or its equivalent by a Local Governmental Agency for an apartment Residence in the Phase or occupancy or issuance of a Certificate of Occupancy (or its equivalent) by the Local Governmental Agency, whichever occurs first, for an apartment Residence within such Phase, or (b) the first day of the first month following the month in which a Multi-Family Area Phase becomes subject to this Master Declaration, and (iii) for the Commercial Area or any other area, on the first day of the first month following the month in which the Phase becomes subject to this Master Declaration. The Master Association must accept title to and maintenance responsibility for each portion of Master Association Property when title and maintenance responsibility is tendered by Declarant or a Neighborhood Builder, whether in fee simple, by easement or otherwise, and the Master Association shall execute each deed and any accompanying escrow instructions if requested to do so by Declarant or a Neighborhood Builder. No Owner shall interfere with the exercise by the Master Association, Declarant or a Neighborhood Builder of rights under this Section.

**ARTICLE IV
DESIGN CONTROL**

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Jurisdiction over design, construction and aesthetic aspects of the Properties is given to the Aesthetic Review Committee. The Aesthetic Review Committee is a three to five person committee initially appointed by the Declarant and eventually appointed by the Board of Directors of the Master Association. The Aesthetic Review Committee must approve all plans for architectural or landscaping modifications in the Properties before the modifications are made. The Aesthetic Review Committee also has the right to review modifications as they are constructed and give final approval of completed modifications.

In addition to establishing the Aesthetic Review Committee, this Article establishes the procedures for pre-approving certain Improvements, granting variances and appealing decisions of the Aesthetic Review Committee.

4.1 MEMBERS OF COMMITTEE.

The Aesthetic Review Committee shall be composed of no fewer than three (3) nor more than five (5) members, with the exact number of members set by the Board. The Aesthetic Review Committee has the right and duty to promulgate Design Guidelines, containing standards, guidelines, procedures and rules, against which to examine any request made pursuant to this Article. Board members may also serve as Aesthetic Review Committee members.

4.2 POWERS AND DUTIES.

4.2.1 General Powers and Duties.

The Aesthetic Review Committee shall consider and act upon all plans and specifications submitted for its approval under the Governing Documents, including inspection of work in progress to assure conformance with plans approved by the Aesthetic Review Committee, and shall perform such other duties as the Board assigns to it. The Aesthetic Review Committee shall not have the power to enforce the Governing Documents. This power is reserved to the Board.

4.2.2 Issuance of Design Guidelines.

The Aesthetic Review Committee shall issue, regularly review, and, if necessary, update its Design Guidelines. The Design Guidelines and all changes thereto must be approved by the Board and the City Planning Commission. The Design Guidelines shall include procedures for submitting plans for approval, may require a fee to accompany each application for approval, and may identify additional factors which the Aesthetic Review Committee will consider in reviewing submissions. The Aesthetic Review Committee may provide that fees it imposes be uniform, or that fees will be determined in any other reasonable manner, such as by the reasonable cost of consultants or the cost of the construction, alterations or installations contemplated. The Aesthetic Review Committee may charge applicants for the cost of consultants the Aesthetic Review Committee uses in reviewing applications. The Aesthetic Review Committee may require such detail in plans and specifications submitted for its review as it deems proper.

4.2.3 Retaining Consultants.

The Aesthetic Review Committee has the power but not the duty to retain Persons to advise the Aesthetic Review Committee in connection with decisions; however, the Aesthetic Review Committee does not have the power to delegate its decision-making power.

4.3 RIGHTS OF APPOINTMENT.

4.3.1 By Declarant.

The members of the Aesthetic Review Committee shall be appointed by Declarant until Close of Escrow for ninety five percent (95%) of the Lots and Condominiums in the Properties and the Annexable Area, after which time, members of the Aesthetic Review Committee shall be appointed by the Board. Aesthetic Review Committee members appointed by the Board must be Members or agents of Members, but Aesthetic Review Committee members appointed by Declarant are not subject to this limit. Declarant may, by written assignment, at any time, transfer its right to appoint one or more Aesthetic Review Committee Members to the Board.

4.3.2 By the Board.

The Board may appoint and remove those members of the Aesthetic Review Committee that Declarant does not appoint. Aesthetic Review Committee members appointed by the Board shall serve for terms determined by the Board or until their respective successors are appointed.

4.3.3 Notice of Appointment.

If a Aesthetic Review Committee member is appointed or removed while both Declarant and the Board have rights of appointment, written notice of such appointment or removal must be given by the appointing party to the other party.

4.4 REVIEW OF PLANS AND SPECIFICATIONS.

4.4.1 Improvements Requiring Approval.

No exterior construction, installation or alteration of an Improvement in the Properties by an Owner or a Neighborhood Association may be commenced until the plans and specifications therefor showing the nature, kind, shape, height, width, color, materials and location thereof have been submitted to and approved in writing by the Aesthetic Review Committee; however, any Improvement may be repainted without Aesthetic Review Committee approval so long as the Improvement is repainted a color approved by the Aesthetic Review Committee.

4.4.2 Application Procedure.

Until changed by the Board, the address for submission of plans and specifications is the Master Association's principal office. The form of application used by the Aesthetic Review Committee shall be determined by the Aesthetic Review Committee and shall include spaces allowing "Adjacent Owners" to sign or initial the application confirming that they have been notified of the application. The Aesthetic Review Committee shall establish a definition of "Adjacent Owners" in its Design Guidelines for use by the Aesthetic Review Committee. Applications will be complete even if all of the Adjacent Owners do not initial the applications so long as the Applicant states in writing to the Board that the Applicant requested that the Adjacent Owners sign the applications.

If the Aesthetic Review Committee receives plans and specifications it determines are not complete, the Aesthetic Review Committee may reject the application. The Aesthetic Review Committee shall give notice of its decision and the reasons therefor to the Owner submitting the plans and specifications ("**Applicant**") at the address set forth in the application within forty-five (45) days after the Aesthetic Review Committee receives all required materials. Any application submitted shall be deemed approved if the Aesthetic Review Committee fails to transmit written disapproval or a request for additional information or materials to the Applicant within forty-five (45) days after the Aesthetic Review Committee receives all required material.

4.4.3 Standard for Approval.

The Aesthetic Review Committee shall approve plans and specifications submitted for its approval only if it determines that:

- (a) the installation, construction or alteration contemplated thereby in the locations indicated will not be detrimental to the appearance of the surrounding area of the Properties as a whole,
- (b) the appearance of any structure affected thereby will be in harmony with the surrounding structures,
- (c) the installation, construction or alteration will not detract from the beauty and attractiveness of the Master Association Property or the enjoyment thereof by the Members,
- (d) if applicable, the maintenance thereof will not become a burden on the Master Association, and
- (e) the installation, construction or alteration is consistent with the Design Guidelines.

The Aesthetic Review Committee may condition its approval of plans and specifications for any Improvement upon any of the following:

- (1) the Applicant's furnishing the Master Association with security acceptable to the Master Association against any mechanic's lien or other encumbrance which may be Recorded against all or any portion of the Properties as a result of such work,
- (2) such changes therein as the Aesthetic Review Committee considers appropriate,
- (3) (if applicable) the Applicant's agreement to grant appropriate easements to the Master Association for the maintenance of the Improvements,
- (4) the Applicant's agreement to install (at its sole cost) water, gas, electrical or other utility meters to measure any increased consumption,
- (5) (if applicable) the Applicant's agreement to reimburse the Master Association for the cost of such maintenance, or

(6) the Applicant's agreement to complete the proposed work within a stated period of time.

The Applicant shall meet any review or permit requirements of all Local Governmental Agencies and other regulatory agencies having jurisdiction prior to making any construction, installation or alterations permitted hereunder. The Applicant must obtain Aesthetic Review Committee approval before submission to the City for a building permit. The Aesthetic Review Committee will track all other City requirements including percent of building materials, etc. in a manner that the Aesthetic Review Committee determines is appropriate and as outlined in the Design Guidelines.

4.4.4 **Relationship to Neighborhood Associations.**

The Aesthetic Review Committee may require that all plans and specifications be approved by any Neighborhood Association having jurisdiction before the Aesthetic Review Committee reviews the plans and specifications. Conditions and requirements imposed by the Aesthetic Review Committee supersede all conflicting conditions or requirements which may be imposed by a Neighborhood Association. The Aesthetic Review Committee's determination of the existence of a conflict or discrepancy between the conditions or requirements imposed by the Aesthetic Review Committee and those imposed by a Neighborhood Association are binding and conclusive upon the Neighborhood Association and any affected Applicant.

4.5 **MEETINGS OF THE AESTHETIC REVIEW COMMITTEE.**

The Aesthetic Review Committee shall meet as necessary to perform its duties. The vote or written consent of a majority of the Aesthetic Review Committee constitutes an act of the Aesthetic Review Committee.

4.6 **NO WAIVER OF FUTURE APPROVALS.**

The Aesthetic Review Committee's approval of any plans and specifications for any work done or proposed or in connection with any matter requiring the Aesthetic Review Committee's approval does not waive any right to withhold approval of any similar proposals, plans and specifications subsequently submitted for approval.

4.7 **COMPENSATION OF MEMBERS.**

The Aesthetic Review Committee's members shall receive no compensation for services rendered, other than reimbursement for reasonable expenses incurred in performing their duties.

4.8 **INSPECTION OF WORK.**

The Aesthetic Review Committee or its duly authorized representative may inspect any work for which approval of plans is required under this Article ("**Work**"). The right to inspect includes the right to require any Owner to take such action as is necessary to remedy any noncompliance with the Aesthetic Review Committee-approved plans consistent with governmental approvals for the Work or with the requirements of the Governing Documents ("**Noncompliance**").

4.8.1 **Time Limit.**

The Aesthetic Review Committee's right to inspect the Work and notify the responsible Owner of any Noncompliance shall terminate sixty (60) days after the Aesthetic Review Committee has received written notice from the Owner that the Work is complete. If the Aesthetic Review

Committee fails to give the Owner a notice of Noncompliance before its inspection period terminates, the Work shall be deemed to comply with the approved plans.

4.8.2 **Remedy.**

If an Owner fails to remedy any Noncompliance within sixty (60) days after the date of notification of Noncompliance from the Aesthetic Review Committee, the Aesthetic Review Committee shall notify the Board in writing of such failure, and the Master Association shall proceed in accordance with Section 12.1.1 of this Master Declaration.

4.9 **SCOPE OF REVIEW.**

The Aesthetic Review Committee shall review and approve, conditionally approve or disapprove all plans submitted to it for any proposed construction, installation or alteration solely on the basis of aesthetic considerations, consistency with the Governing Documents, height of landscaping materials at maturity, and the overall benefit or detriment which would result to the immediate vicinity and the Properties generally. The Aesthetic Review Committee shall consider the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features. The Aesthetic Review Committee is not responsible for reviewing, nor may its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with law.

4.10 **VARIANCE.**

The Aesthetic Review Committee may authorize variances from compliance with any of the architectural and landscaping provisions of the Governing Documents, including restrictions on 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 writing, must be approved by the Lehi City Board of Adjustments, must be signed by a majority of the Aesthetic Review Committee, and become effective upon Recordation. After Declarant's right to appoint a majority of the Aesthetic Review Committee's members expires, the Board must approve any variance recommended by the Aesthetic Review Committee before any such variance becomes effective. If a variance is granted, no violation of the covenants, conditions and restrictions contained in the Governing Documents shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance does not waive any of the terms and provisions of the Governing Documents for any purpose except as to the particular property and particular provision hereof covered by the variance, nor does it affect the Owner's obligation to comply with all laws affecting the use of his Residence, Lot or Condominium.

4.11 PRE-APPROVALS.

The Aesthetic Review Committee may pre-approve types or classes of construction activities if, in the exercise of the Aesthetic Review Committee's judgment, pre-approval of such types or classes of Improvements is appropriate in carrying out the purposes of the Governing Documents.

4.12 APPEALS.

4.12.1 Persons Who Have Appeal Rights.

Only an Applicant may appeal rejection of an application. Only "Adjacent Owners" as defined in Section 4.4.2 and the Applicant may appeal any approved application. The Persons granted appeal rights by this Section 4.12.1 are referred to in Sections 4.12.2 and 4.12.3 as "Appellants."

4.12.2 Appeals of Neighborhood Association Decisions.

Appeals (if any) of decisions by the Neighborhood Association's Aesthetic Review Committee to the board of directors of the Neighborhood Association shall be in accordance with the appropriate Neighborhood Declaration. Neither the Board nor the Aesthetic Review Committee nor the Neighborhood Association has any duty to ensure that approvals are communicated to all potential Appellants. Decisions made by a Neighborhood Association's board are not appealable. This limit on appeals from Neighborhood Association board decisions is not a limit on the Neighborhood Association's board's ability to modify a decision it has issued. Each Neighborhood Association's board shall adopt procedures for appeals of Aesthetic Review Committee decisions to the Neighborhood Association's board.

4.12.3 Appeals of Decisions of Aesthetic Review Committee.

Appellants have the right to appeal decisions by the Aesthetic Review Committee to the Board of Directors of the Master Association. Appellants' rights to file appeals terminate after the deadline following the date the Applicant's application has been approved by the Aesthetic Review Committee as set forth in the Design Guidelines. Appellants (who are not Applicants) have the responsibility to determine when an application has been approved. Neither the Board nor the Aesthetic Review Committee has any duty to ensure that approvals are communicated to all potential Appellants; the Aesthetics Review Committee is only responsible for ensuring that the Applicant is advised of its decision. Decisions made by the Master Association Board are not appealable. This limit on appeals from Master Association Board decisions is not a limit on the Master Association Board's ability to amend or modify a decision it has issued under circumstances it considers appropriate. The Board shall further adopt policies and procedures for appeals of Aesthetic Review Committee decisions.

ARTICLE V OWNERS' MEMBERSHIP AND VOTING RIGHTS

Each Person who purchases a Lot or Condominium in the Properties becomes a Member of the Master Association with certain rights and privileges. Membership rights, limits on

Memberships and transfer of Memberships, voting rights and rights of co-owners are all described in detail in the Articles and Bylaws. Some Membership information is summarized here. Declarant's veto rights are also described in this Article. Declarant is given the right to veto certain actions by the Master Association because of Declarant's long term financial and philosophical commitment to development of the Properties.

As described in the Articles and Bylaws, the Declarant has the right to appoint a majority of the Directors of the Master Association as follows. Until the first annual meeting of Members, the Declarant appoints all of the Directors. At the first annual meeting of Members, Members, other than Declarant, can elect one (1) Director; the remaining Directors will be elected by the Declarant. After Close of Escrow occurs for one thousand seven hundred fifty (1,750) Lots and Condominiums, the Members, other than Declarant, can elect two (2) Directors and the remaining Directors are elected by Declarant. After Close of Escrow occurs for three thousand one hundred fifty (3,150) Lots and Condominiums, the Members, other than Declarant, can elect three (3) Directors and the Declarant appoints the remaining two (2) Directors. Once Close of Escrow occurs for three thousand five hundred (3,500) Lots and Condominiums, the Members, other than Declarant, can elect all of the Directors. This system is used to allow Declarant, who will be extensively involved in the Properties for a long period of time, to ensure that the Master Association fulfills its purposes. By allowing the Members to elect increasing numbers of representatives to the Board on a gradual basis, the Declarant encourages Member participation and trains the Members in operation of the Master Association so that when the Declarant is no longer involved with the Properties, the Members can effectively operate the Master Association.

5.1 MEMBERSHIP INFORMATION.

Every Owner automatically acquires a Membership and retains the Membership until the Owner's Lot or Condominium ownership ceases, at which time such Owner's Membership shall automatically cease. Ownership of a Lot or Condominium is the sole qualification for Membership. Neither the issuance nor the holding of shares of stock is necessary to evidence Membership in the Master Association. The Master Association has one class of voting Membership which is described in the Articles and Bylaws. All Memberships in the Master Association are appurtenant to the Lots and Condominiums and shall not be separated from the Lot or Condominium to which the Memberships appertain.

5.2 DECLARANT'S VETO RIGHT.

Declarant has a right to veto any of the actions listed in Section 5.3 if proposed to be taken by the Master Association. This right shall terminate on the date on which Declarant no longer owns or has a Mortgage interest in any portion of the Properties or Annexable Territory.

5.3 ACTIONS SUBJECT TO DECLARANT'S VETO.

The following actions are subject to Declarant's veto:

5.3.1 Change in Design.

Any change in the general, overall architectural and landscaping design of the Properties or the Master Association Property;

5.3.2 Aesthetic Review Committee.

Adoption of and any change to the Design Guidelines, all decisions of the Aesthetic Review Committee, decisions made on appeal to the Board; and decision to terminate the Aesthetic Review Committee;

5.3.3 Community Guidelines.

Any change to the Community Guidelines;

5.3.4 Reduction in Services.

Any significant reduction of Master Association Property services, the amount of Common Assessments or entering into contracts for maintenance or other goods and services benefiting the Master Association or the Master Association Property at contract rates which are fifteen percent (15%) or more below the reasonable cost for such maintenance, goods or services;

5.3.5 Special Benefit Areas.

Creation of or modification of a Special Benefit Area;

5.3.6 Annexations.

Annexation to the Properties of real property pursuant to Section 16.5;

5.3.7 Amendments.

All proposed amendments to this Master Declaration.

**ARTICLE VI
OWNERS' PROPERTY RIGHTS AND PROPERTY EASEMENTS**

Living or working in a master planned community involves sharing and cooperation. The various types of properties and uses in the Properties require the creation of special property rights and provisions to address the needs of the variety of Persons living and working in the Properties. The property rights acquired by Owners and other Persons are described in this Article along with limits on the exercise of those rights.

6.1 OWNERS' EASEMENT OF ENJOYMENT OVER MASTER ASSOCIATION PROPERTY.

Every Owner has a right and easement of ingress and egress and of enjoyment in, to and over the Master Association Property, and such easement is appurtenant to and shall pass with title to every Lot or Condominium, subject to the following:

6.1.1 Master Association Exercise of Powers.

The Master Association's exercise of its powers.

6.1.2 Suspension of Privileges.

The Master Association's right to enforce provisions of the Governing Documents by suspending the Membership rights and other rights and easements of any Owner (and of the Persons deriving rights and easements from an Owner) to use the Master Association Property.

6.1.3 **Transfer of Property.**

Subject to the limits established in the Articles and Bylaws, the Master Association's right to transfer all or a part of the Master Association Property.

6.1.4 **Declarant's Right to Access.**

The right of Declarant, the Neighborhood Builders and their respective sales agents, representatives and prospective purchasers to the nonexclusive use of the Master Association Property and Common Area, without cost, for access and use to market and dispose of the Properties and the Annexable Territory, until neither Declarant nor any Neighborhood Builder owns any portion of the Properties or the Annexable Territory; however, such use shall not unreasonably interfere with the rights of enjoyment of the other Owners established by this Master Declaration.

6.1.5 **Declarant and Neighborhood Builder Rights.**

The easements, rights and reservations of Declarant and the Neighborhood Builders established in this Master Declaration.

6.1.6 **Restricting Access.**

The Master Association's right to reasonably restrict access to slopes and other landscaped areas, maintenance facilities, open space areas and other areas of the Master Association Property designated by the Board. A Supplemental Declaration may designate exclusive use areas in portions of the Master Association Property for the exclusive use or maintenance by one or more Owners (such as common driveway areas).

6.1.7 **Master Association Property Improvements.**

The Master Association's right to maintain, reconstruct and refinish any Improvement on the Master Association Property.

6.1.8 **Access to Public.**

The Master Association's right to make portions of the Master Association Property available for use by Persons who are not residents or Owners in the Properties on such terms and at such times as are negotiated by the Master Association.

6.1.9 **Other Easements.**

The easements reserved in the other Sections of this Article.

6.2 **EASEMENTS FOR VEHICULAR/PEDESTRIAN TRAFFIC.**

Declarant reserves, for the benefit of all Owners and the Neighborhood Associations, nonexclusive easements appurtenant to all the Lots, Condominiums and Common Area in the Properties for vehicular and pedestrian traffic over the private streets and walkways within the Master Association Property, subject to the parking and street restrictions in Article II.

6.3 **EASEMENTS FOR EMERGENCY VEHICULAR ACCESS AND PUBLIC SERVICE PURPOSES.**

Declarant reserves easements over the Properties for public services of the Local Government Agencies, including the right of law enforcement and fire protection personnel to enter upon any part of the Properties for the purpose of carrying out their official duties and for emergency vehicle access.

6.4 EASEMENTS FOR PRIVATE AND PUBLIC UTILITY PURPOSES.

Declarant reserves easements over the Master Association Property for public and private utility purposes, including the right of any public utility of access over the Master Association Property for purposes of reading and maintaining meters, and using and maintaining fire hydrants located in the Properties. Declarant also reserves reciprocal, nonexclusive easements over all Lots, Condominiums, Common Area and the Master Association Property, for installation and maintenance of utility Improvements.

6.5 EASEMENT FOR DECLARANT AND NEIGHBORHOOD BUILDERS.

Declarant reserves for its benefit, for the benefit of the Neighborhood Builders, and their agents, employees, contractors, customers and invitees and for the benefit of their successors and assigns, a nonexclusive easement appurtenant to the Annexable Territory, over the Master Association Property for access, use and enjoyment, to show the Properties and Annexable Territory to prospective purchasers, or to develop, market, sell, lease or otherwise dispose of the Properties and the Annexable Territory. Such easement shall continue for so long as Declarant or a Neighborhood Builder owns any portion of the Properties or the Annexable Territory.

6.6 MASTER TELECOMMUNICATIONS EASEMENTS.

Declarant reserves the right to reserve easements (“Telecommunication Easements”) within the Properties for purposes of constructing, installing, operating, maintaining, inspecting, removing, or enhancing equipment, facilities and structures necessary for, or used in the provision of Telecommunication Facilities and Telecommunications Services (“Telecommunication Purposes”), for the benefit of Declarant and its subsidiaries, transferees, successors and assigns. All Telecommunication Facilities shall be owned, leased or licensed by Declarant, its subsidiaries, successors, transferees and assigns, all as determined by Declarant, in its sole discretion and business judgment. Such easements are freely transferable by Declarant to any other Person and their successive owners. Transfer of all or any portion of the Properties does not imply the transfer of any Telecommunication Easements or Telecommunication Facilities. Exercise of Telecommunication Easements shall not be unreasonably withheld and said easements will not interfere with the reasonable use and enjoyment of the Properties by the Owners.

6.7 MISCELLANEOUS EASEMENTS.

Declarant reserves the following easements, along with the right to transfer them, for the benefit of all of the Properties, and for the benefit of all of the Owners:

6.7.1 Drainage.

Reciprocal, nonexclusive easements for drainage of water over, across and upon Lots, Condominiums, Common Areas and Master Association Property (excluding the buildings and areas proposed to include a building) resulting from the normal use of the Lots, Condominiums, Common Areas or Master Association Property.

6.7.2 Maintenance and Repair.

Nonexclusive easements over the Properties for access to perform necessary maintenance, repair or replacement of any Improvement constructed by Declarant or a Neighborhood Builder.

6.7.3 Easements on Plats.

Easements as shown on any Recorded subdivision plat of any portion of the Properties.

6.7.4 Encroachments.

Easements for minor encroachment and maintenance if any Improvement in a Lot, Condominium or Common Area encroaches upon the Master Association Property or if Master Association Property Improvements encroach upon any Lot, Condominium or Common Area as a result of construction by Declarant or a Neighborhood Builder or as a result of construction or reconstruction approved by the Aesthetic Review Committee, repair, shifting, settlement or movement of any portion of the Properties.

6.8 DELEGATION OF USE.

Any Owner may delegate the Owner's right to use the Master Association Property to such Owner's tenants, contract purchasers or subtenants who reside in such Owner's Residence, subject to reasonable regulation by the Board. Each Multi-Family Area Owner may delegate its right to use the Master Association Property to tenants or subtenants, and such tenants or subtenants may further delegate their rights to the members of their Family and their guests, subject to the Governing Documents. Each Commercial Area Owner may delegate its right to use the Master Association Property to tenants or subtenants, and such tenants or subtenants may further delegate such right to tenants or subtenants.

6.9 WAIVER OF USE.

No Owner may exempt himself from personal liability for Assessments levied by the Master Association, nor release his Lot or Condominium from the liens and charges hereof, by waiving use of the Master Association Property or any facilities thereon or by abandoning such Owner's Lot or Condominium.

6.10 RIGHT TO GRANT ADDITIONAL EASEMENTS.

Declarant reserves easements over the Master Association Property for the exclusive use by an Owner or Owners of contiguous property as a yard, recreational, gardening, or landscaping area. Any such easement may be transferred by Declarant prior to conveying the last Lot or Condominium in the Properties and the Annexable Territory. The transfer must be approved in advance by the Board. The purpose of the easement, the portion of the Master Association Property affected, the Lot or Condominium to which the easement is appurtenant, and any restrictions on use of the easement area shall be identified in the Recorded document used to transfer the easement. Nothing in this Master Declaration shall be construed as giving the Declarant the right to alter existing utility easements.

ARTICLE VII ASSESSMENT COLLECTION

One of the obligations of Owners is to contribute financially to support the operations of the Master Association. The Master Association funds its operations through collection of different kinds of assessments: Common Assessments, Capital Improvement Assessments, Reconstruction Assessments and Compliance Assessments. This Article describes how the

different types of assessments are collected and used by the Master Association. This Article also sets limits on the amount of certain assessments that can be charged to Owners.

7.1 CREATION OF ASSESSMENT OBLIGATION.

Declarant and each Neighborhood Builder, for each Lot or Condominium owned by Declarant or a Neighborhood Builder, covenants to pay, and each Owner is deemed to covenant to pay to the Master Association (a) Common Assessments, (b) Capital Improvement Assessments, (c) Compliance Assessments, and (d) Reconstruction Assessments. All Assessments, together with interest, costs and reasonable attorneys' fees for the collection thereof, are a charge and shall be and become a lien upon the Lot or Condominium against which such Assessment is made. Each Assessment, together with interest, costs and reasonable attorneys' fees, is also the personal obligation of the Owner of the Lot or Condominium at the time when the Assessment fell due.

7.2 MAINTENANCE FUNDS.

The Maintenance Funds may be established as trust accounts at a banking or savings institution and may be combined so long as the funds are treated as separate funds for accounting purposes. The Board shall budget, establish and keep at least the following accounts (the "Maintenance Funds"):

7.2.1 General Operating Fund.

A General Operating Fund for current expenses of the Master Association, exclusive of current expenses attributable to the Special Benefit Areas, if any.

7.2.2 General Reserve Fund.

General Reserve Fund for the deposit of Reserves, exclusive of Reserves attributable to the Special Benefit Areas, if any.

7.2.3 Special Benefit Area Operating Fund.

For each Special Benefit Area, a separate Special Benefit Area Operating Fund for current expenses of the Special Benefit Area.

7.2.4 Special Benefit Area Reserve Fund.

For each Special Benefit Area, a separate Special Benefit Area Reserve Fund for the deposit of Reserves attributable to the Special Benefit Area.

7.2.5 Miscellaneous Maintenance Funds.

Other Maintenance Funds as the Board deems necessary.

7.3 PURPOSE OF ASSESSMENTS.

Assessments and any other amounts deposited into the Maintenance Funds shall be used exclusively to (a) promote the Owners' recreation and welfare, (b) improve and maintain the Master Association Property, and (c) discharge any other Master Association obligations. Disbursements from the particular Maintenance Funds shall be limited to specific purposes as follows:

7.3.1 General Operations.

Disbursements from the General Operating Fund shall be made for payment of Common Expenses which are not Budgeted to a Special Benefit Area.

7.3.2 General Reserves.

Disbursements from the General Reserve Fund shall be made solely for payment of those Reserve expenditures which are not Budgeted to a Special Benefit Area.

7.3.3 Special Benefit Area Operations.

Disbursements from each Special Benefit Area Operating Fund shall be made solely for payment of the current operating Common Expenses of the Special Benefit Area for which the fund was created.

7.3.4 Special Benefit Area Reserves.

Disbursements from each Special Benefit Area Reserve Fund shall be made solely for payment of Reserve expenditures attributable to the Special Benefit Area for which the fund was created.

7.4 ASSESSMENT COMPONENTS, RATES AND EXEMPTIONS.

Each annual Common Assessment is an aggregate of separate assessments for each of the Maintenance Funds, reflecting an itemization of the amounts of prospective deposits into the General Operating and Reserve Funds, Special Benefit Area Operating and Reserve Funds, and other Maintenance Funds established by the Master Association. Common Assessments shall be assessed against the Owners of Lots or Condominiums as follows:

7.4.1 Assessment Units.

Assessment Units are allocated as follows:

- (a) **Residential Area.** Each Residential Area single Family Lot and Condominium shall be allocated one (1) Assessment Unit.
- (b) **Other Areas.** If a Phase includes Lots or Condominiums that are not a part of the Residential Area, the Supplemental Declaration annexing that Phase to this Master Declaration shall designate the number of Assessment Units assigned to each Lot or Condominium in the area.
- (c) **Special Allocation.** Declarant may identify any Common Expense which is an element of the General Assessment Component as subject to a special allocation. The Common Expense and special allocation must be identified in this Master Declaration or a Supplemental Declaration. A special allocation is made when all Lots and Condominiums subject to assessment are obligated to pay an expense, but the expense is allocated in a proportion based on something other than Assessment Units. If Telecommunication Services are provided through the Master Association, they may be subject to a special allocation.

7.4.2 General Assessment Component.

The General Assessment Component is composed of Common Expenses of the Master Association exclusive of Common Expenses Budgeted to the Special Benefit Areas and shall be allocated among all of the Residential Area Lots and Condominiums, Multi-Family Area Residences, Commercial Area Lots and Condominiums and any other areas in the Properties based upon the number of Assessment Units chargeable to each Lot, Condominium and Residence. The proportionate share of the General Assessment Component of Common Expenses chargeable to Residential Area and Multi-Family Area Residences, Commercial Area Lots and Condominiums, and other area Lots shall be a fraction, the numerator of which shall be

the number of Assessment Units allocated to such Residence or Lot, and the denominator of which shall be the total number of Assessment Units allocated to all Residential Area and Multi-Family Area Residences, Commercial Area Lots and Condominiums and other area Lots in the Properties.

7.4.3 Special Benefit Area Assessment Component.

The Special Benefit Area Assessment Component is that portion of the Common Expenses of the Master Association composed of Special Benefit Area Operating and Reserve Funds Budgeted exclusively to any particular Special Benefit Area and shall be assessed to the Lots or Condominiums designated in a Supplemental Declaration as Lots or Condominiums to which the exclusive or disproportionate maintenance of such Special Benefit Area has been allocated. Unless otherwise provided in such Supplemental Declaration, the proportionate share of the Special Benefit Area Assessment Component of Common Expenses chargeable to each Lot or Condominium located in such Special Benefit Area shall be a fraction, the numerator of which shall be the number of Assessment Units allocated to the Lot or Condominium in the Special Benefit Area, and the denominator of which shall be the total number of Assessment Units allocated to all Lots or Condominiums located in such Special Benefit Area.

7.4.4 Excess Funds.

During the term of any subsidy agreement between Declarant or any Neighborhood Builder and the Master Association, all funds remaining in the Maintenance Funds in excess of the amounts used for the operation and payment of Common Expenses of the Properties (including Reserves) shall be accumulated to fund future Maintenance Fund deficits. After the termination of any subsidy agreement, the Board of Directors may determine that funds remaining in the Operating Funds, in excess of the amounts used for the operation of the Properties, may, in the discretion of the Board, be used to reduce the following year's Common Assessment attributable to such Maintenance Funds.

7.5 LIMIT ON COMMON ASSESSMENT INCREASES.

7.5.1 Increases in the General Assessment Component.

During the Fiscal Year in which Common Assessments commence, the Board may increase the General Assessment Component by more than twenty percent (20%) of the General Assessment Component disclosed for the Properties in the Budget provided by Declarant on the first Close of Escrow in the Properties only if the Board first obtains the approval of the Neighborhood Representatives. After the Fiscal Year in which Common Assessments commence, the Board may unilaterally increase the General Assessment Component up to twenty percent (20%) of the General Assessment Component for the immediately preceding Fiscal Year. All other increases must be approved in advance by the Neighborhood Representatives.

7.5.2 Increases in the Special Benefit Area Component.

During the Fiscal Year in which Common Assessments commence, the Board may increase any Special Benefit Area Component by more than twenty percent (20%) of the Special Benefit Area Component disclosed for the Properties in the Budget provided by Declarant on the first Close of Escrow in the Properties only if the Board first obtains the approval of the Neighborhood Representatives representing the Lots and Condominiums in the Special Benefit Area. After the Fiscal Year in which Common Assessments commence, the Board may unilaterally increase any

Special Benefit Area Component up to twenty percent (20%) of the Special Benefit Area Component for the immediately preceding Fiscal Year. Any other increases must be approved in advance by the Neighborhood Representatives representing the Lots and Condominiums in the Special Benefit Area.

7.5.3 Provisions Applicable to All Components of Common Assessments.

(a) *Supplemental Common Assessments.* If the Board determines that Common Expenses may be properly paid by collection of a Common Assessment in an amount less than the maximum authorized Common Assessment, the Board may levy a Common Assessment which is less than the maximum authorized amount. If the Board determines that the Common Assessment being collected is or will become inadequate to pay all Common Expenses, the Board shall immediately determine the approximate amount of the inadequacy and levy a supplemental Common Assessment, subject to the limitations described in subsections 7.5.1 and 7.5.2 above.

(b) *Automatic Assessment Increases.* Notwithstanding any other provisions of this Section 7.5, upon annexation of any portion of the Annexable Territory, the Common Assessment shall be automatically increased by the additional amount, if any, necessary to maintain the Master Association Property. To minimize the need for frequent adjustments in the amount of the Common Assessments during the development of the Properties, the Board may level the amount of the Common Assessments invoiced to the Owners an amount calculated to defray the Common Expenses of the Master Association during the time that Common Assessments are fluctuating due to the periodic annexation of Lots, Condominiums and Master Association Property.

7.6 SPECIAL ASSESSMENTS.

7.6.1 Authorization.

The Board may levy, in any Fiscal Year, a Capital Improvement Assessment or Reconstruction Assessment (each, a "Special Assessment" for purposes of this Section 7.6) applicable to that Fiscal Year only for purposes authorized in this Master Declaration or any Supplemental Declaration.

7.6.2 Limit Outside of Special Benefit Areas.

No Special Assessment in any Fiscal Year for an Improvement not included in a Special Benefit Area which, if added to the Special Assessments already levied during such Fiscal Year (excluding Special Assessments for Special Benefit Areas), exceed ten percent (10%) of the Master Association's Budgeted gross expenses for such Fiscal Year (excluding Budgeted gross expenses for Special Benefit Areas), may be levied without the approval of the Neighborhood Representatives.

7.6.3 Limit for Special Benefit Areas.

No Special Assessments in any Fiscal Year for an Improvement in a Special Benefit Area which, if added to the Special Assessments already levied during such Fiscal Year solely for that Special Benefit Area, exceed ten percent (10%) of the Master Association's Budgeted gross expenses for the Special Benefit Area for such Fiscal Year, may be levied without the approval of the

Neighborhood Representatives representing the Lots and Condominiums in the Special Benefit Area.

7.7 COMMENCEMENT OF COMMON ASSESSMENTS.

Common Assessments shall commence as to each Lot or Condominium in any Phase containing Residential Area on the first Close of Escrow in such Phase. Assessments shall commence as to each Lot in a Multi-Family Area Phase on the later to occur of (i) the day of the first residential occupancy of any portion of such Multi-Family Area Phase occurs or following the issuance of a temporary or final certificate of occupancy by applicable the Local Governmental Agency, whichever occurs first, or (ii) the day such Phase becomes subject to this Master Declaration. Common Assessments shall commence on each Lot or Condominium in a Commercial Area on the day such Phase becomes subject to this Master Declaration. Notwithstanding the foregoing, Common Assessments shall not commence on any Apartment or Commercial Area until the first Close of Escrow in the Properties. The first Common Assessment for each Phase shall be prorated for the number of months remaining in the Fiscal Year.

7.8 COLLECTION OF COMMON ASSESSMENTS.

The Board shall fix the amount of the 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 any Common Assessment, Capital Improvement Assessment or Reconstruction Assessment shall be sent via first-class mail to every Owner subject thereto not less than thirty (30) days prior to the increased Assessment becoming due. The due dates shall be established by the Board. The Master Association shall, upon demand and for a reasonable charge, furnish a certificate setting forth whether the Assessments on a specified Lot or Condominium are current. The Master Association may use any method of collecting Assessments allowed by law including charging credit cards or electronic transfers. At the Master Association's discretion, the additional cost of any method of collection may be collected from the Owner electing the method of collection and does not have to be divided equally among all Owners.

7.9 EXEMPT PROPERTY.

The following property is exempt from the obligation to pay Assessments:

7.9.1 Public Property.

All portions of the Properties dedicated to and accepted by a Local Government Agency.

7.9.2 Master Association Property.

The Master Association Property.

7.9.3 Common Area.

All Common Area.

7.9.4 Other.

Any areas exempted from Assessments in a Supplemental Declaration.

**ARTICLE VIII
RESIDENTIAL AREA MAINTENANCE OBLIGATIONS**

To protect the aesthetics of the Properties, the Declarant has established standards for maintaining the various types of property in the Residential Area. This Article describes these standards.

8.1 MAINTENANCE OBLIGATIONS OF OWNERS.

Each Owner of a Lot in a Residential Area shall maintain his Residence and Lot in accordance with this Section 8.1 unless this Section 8.1 is explicitly superseded in a Supplemental Declaration.

8.1.1 General Responsibilities.

Each Owner, at the Owner's sole expense, shall maintain and restore all Improvements located on the Owner's Lot and the Lot itself, in a neat, sanitary and attractive condition. Such maintenance responsibilities include the maintenance of the entire Residence on the Lot, as well as any fence or wall constructed on the Lot along the Lot Line abutting any Master Association Property. Each Owner whose Lot uses a private drainage system installed by Declarant or a Neighborhood Builder is responsible for its maintenance. Each Owner whose Lot uses a sewer system lateral is responsible for the maintenance of that portion of the lateral which exclusively serves such Owner's Lot. Each Owner is also responsible for maintaining the mailbox that serves the Owner's Lot. If any Owner permits any Improvement which such Owner is responsible for maintaining to fall into disrepair or to become unsafe, unsightly or unattractive, or to otherwise violate the Governing Documents, the Board may seek any remedies at law or in equity which it may have. In addition, the Board may, after Notice and Hearing, enter upon such Owner's Lot to perform such maintenance and charge the cost thereof to the Owner as a Compliance Assessment.

8.1.2 **Insurance Obligations.**

Each Owner is also responsible for carrying public liability insurance in the amount such Owner deems desirable to cover such Owner's individual liability for damage to person or property occurring inside such Owner's Residence or elsewhere upon such Owner's Lot.

8.1.3 **Damage to Residences-Reconstruction.**

If all or any portion of any Lot or Residence is damaged or destroyed by fire or other casualty, the Owner of such Lot shall either (i) rebuild, repair or reconstruct the Lot and the Residence thereon in a manner which will restore them substantially to their appearance and condition immediately prior to the casualty or as otherwise approved by the Aesthetic Review Committee, or (ii) install landscaping on the Lot without rebuilding the Residence as approved by the Aesthetic Review Committee. The Owner of any damaged Lot or Residence and the Aesthetic Review Committee shall proceed with all due diligence. The Owner shall cause construction or landscaping to commence within six (6) months after the damage occurs and to be completed within twelve (12) months after damage occurs, unless prevented by causes beyond such Owner's reasonable control. A transferee of the Lot which is damaged or upon which is located a damaged Residence shall commence and complete construction or landscaping in the respective periods which would have remained for the performance of such obligations if the Owner of the Lot at the time of the damage still held title to the Lot. However, no such transferee may be required to commence or complete such construction in less than thirty (30) days from the date such transferee acquired title to the Lot.

8.1.4 **Party Walls.**

Each wall or fence which is placed on the dividing line between the Lots (the "Party Wall") is a party wall. The cost of reasonable maintenance of a Party Wall shall be shared equally by the Owners of the Lots divided by the Party Wall. However, each Owner is responsible for repainting the side of any Party Wall facing his Lot. If a Party Wall is destroyed or damaged, any Owner whose Lot is affected thereby may restore it, and the Owner of the other Lot which is affected thereby shall contribute equally to the cost of restoration. An Owner who by his negligent or willful act causes a Party Wall to require repair or replacement shall bear the whole cost of the necessary repairs or replacement. The right of any Owner to contribution from any other Owner under this Subsection is appurtenant to each Owner's Lot and passes to such Owner's successors in title.

8.2 **NEIGHBORHOOD ASSOCIATION RESPONSIBILITIES.**

Each Neighborhood Association shall maintain all Improvements on its Common Area in a neat, sanitary and attractive condition. However, each Neighborhood Association is not responsible for performing those items of maintenance, repair or Improvement of the Condominiums or exclusive use areas appurtenant to the Condominiums, the maintenance of which is the responsibility of the Owners. If any Neighborhood Association permits any Improvement which such Neighborhood Association is responsible for maintaining, to fall into disrepair or to become unsafe, unsightly or unattractive, or to otherwise violate this Master Declaration, the Board may pursue any remedies at law or in equity which it may have. In addition, the Board may, after Notice and Hearing, enter upon such Common Area to make such repairs or to perform such maintenance and charge the cost thereof to the Neighborhood Association. Said cost shall be a Compliance Assessment enforceable as set forth in this Master Declaration.

8.3 MAINTENANCE OBLIGATIONS OF THE MASTER ASSOCIATION.

8.3.1 Responsibilities.

The Master Association shall maintain all Improvements on the Master Association Property in an attractive condition and in good order and repair. The Board shall determine, in its sole discretion, the level and frequency of maintenance of the Master Association Property. The Master Association may add or remove any landscaping Improvements to or from the Master Association Property and shall keep the landscaping thereon free of weeds and disease.

8.3.2 Inspection.

The Board shall have the Master Association Property and all Improvements thereon inspected at least once every three (3) years in order to (a) determine whether the Master Association Property is being maintained in accordance with the standards of maintenance established in the Governing Documents, (b) determine the condition of the Master Association Property and any Improvements thereon, including the existence of any hazards or defects, and the need for performing additional maintenance, refurbishment, replacement, or repair, and (c) recommend preventive actions to reduce potential maintenance costs to be incurred in the future. The Board shall keep Declarant fully informed of the Board's activities under this Section 8.3.2. The Board may employ such experts and consultants as necessary to perform the inspection and make the report required by this Section. The Board shall prepare a report of the results of the inspection required by this Section. The report shall be furnished to Owners and to Declarant within the time set forth for furnishing Owners with the Budget. The report must include at least the following:

- (a) a description of the condition of the Master Association Property, including a list of items inspected, and the status of maintenance, repair and need for replacement of all such items;
- (b) a description of all maintenance, repair and replacement planned for the ensuing Fiscal Year and included in the Budget;
- (c) if any maintenance, repair or replacement is to be deferred, the reason for such deferral;
- (d) a summary of all reports of inspections performed by any expert or consultant employed by the Board to perform inspections;
- (e) a report of the status of compliance with the maintenance, replacement and repair needs set forth in the inspection report for preceding years; and
- (f) such other matters as the Board deems appropriate.

8.3.3 **Damage to Master Association Property.**

After Notice and Hearing, the Board may levy the cost of any maintenance, repairs and replacements by the Master Association within the Master Association Property arising out of or caused by the willful or negligent act of an Owner, other Person or any Neighborhood Association as a Compliance Assessment against the responsible Owner, Person or Neighborhood Association.

ARTICLE IX

DAMAGE AND CONDEMNATION OF MASTER ASSOCIATION PROPERTY

This Article establishes the procedure for repairing or reconstructing damaged Master Association Property and for obtaining funds from condemnation of Master Association Property.

Damage to or destruction of all or any portion of the Master Association Property and condemnation of all or any portion of the Master Association Property shall be handled in the following manner:

9.1 **REPAIR AND RECONSTRUCTION.**

If the Master Association Property is damaged or destroyed, the Master Association shall cause the Master Association Property to be repaired and reconstructed in accordance with plans and specifications approved by the Board. If the cost of effecting total restoration of the Master Association Property exceeds the available insurance proceeds, then the Master Association shall levy a Reconstruction Assessment against the Lots and Condominiums and their respective Owners equal to the difference between the total restoration cost and the insurance proceeds.

9.2 **OWNERS' RESPONSIBILITIES.**

Each Owner is liable to the Master Association for all expenses of repairing damage to the Master Association Property which may be sustained due to the negligence or willful misconduct of said Owner or the Persons deriving their right to use the Master Association Property from said Owner. The Master Association may, after Notice and Hearing, (i) charge the Owner for the cost of repairing the damage, (ii) determine whether any claim shall be made upon the insurance kept by the Master Association and (iii) levy against such Owner a charge equal to any deductible paid and the increase, if any, in the insurance premium directly attributable to the damage caused by such Owner or the Persons for whom such Owner may be responsible. If a Lot or Condominium is jointly owned, the liability of its Owners is joint and several, except to the extent that the Master Association has previously contracted in writing with such joint Owners to the contrary.

9.3 EMINENT DOMAIN.

If all or any portion of the Master Association Property is taken by exercise of the power of eminent domain or by purchase in lieu thereof, the award in condemnation shall be paid to the Master Association and deposited in the Operating Fund. No Owner may participate as a party, or otherwise, in any proceedings relating to such condemnation.

ARTICLE X INSURANCE OBLIGATION OF MASTER ASSOCIATION

This Article establishes minimum requirements for insurance kept by the Master Association.

10.1 CASUALTY INSURANCE.

The Board shall obtain all risk property insurance for loss or damage to all insurable Improvements on the Master Association Property with an agreed amount endorsement for no less than one hundred percent (100%) of the full replacement cost (new without deduction for depreciation) of the cost of Improvements, fixtures and other property, without deduction for coinsurance, and may obtain insurance against such hazards and casualties as the Master Association may deem desirable if commercially reasonable and held by reasonably prudent owners of similar properties. The Master Association may also insure any other real or personal property it owns against loss or damage by fire and such other hazards as the Master Association may deem desirable, with the Master Association as the owner and beneficiary of such insurance. The policies insuring the Master Association Property must be written in the name of, and the proceeds thereof must be payable to the Master Association. Unless the applicable insurance policy provides for a different procedure for filing claims, all claims made under such policy must be sent to the insurance carrier or agent, as applicable, by certified mail and be clearly identified as a claim. The Master Association shall keep a record of all claims made.

10.2 INSURANCE OBLIGATIONS OF OWNERS.

Each Owner is responsible for insuring his personal property and all other property and Improvements within his Lot or Condominium as required by the applicable Supplemental Declaration or applicable Neighborhood Declaration. Such policies shall not adversely affect or diminish any coverage under any insurance obtained by or on behalf of the Master Association. Duplicate copies of such other policies shall be deposited with the Board upon the Board's request. If any loss intended to be covered by insurance carried by or on behalf of the Master Association occurs and the proceeds payable thereunder are reduced due to insurance carried by any Owner, such Owner shall assign the proceeds of such insurance to the Master Association, to the extent of such reduction.

10.3 WAIVER OF SUBROGATION.

All policies of property insurance held by the Master Association or the Owners must provide, if available on commercially reasonable terms, for a waiver of: (a) any defense based on coinsurance, and (b) any claim for subrogation and other rights of recovery as they might have against each other and their respective agents, employees, invitees and insurers with respect to all perils covered by whatever casualty insurance is in effect. As to each policy of insurance the Master Association keeps which will not be voided or impaired thereby, the Master Association

waives and releases all claims against the Board, the Owners, the Manager, Declarant, the Neighborhood Builders 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 or breach of any agreement by such Persons, but only to the extent that insurance proceeds are received in compensation for such loss.

10.4 LIABILITY AND OTHER INSURANCE.

The Master Association shall obtain commercial general liability insurance, including coverage for medical payments and malicious mischief, in such limits as it deems desirable, insuring against liability for bodily injury, death and property damage arising from the Master Association's activities or with respect to property the Master Association maintains or is required to maintain including, if obtainable, a cross-liability endorsement insuring each insured against liability to each other insured. The Master Association may also obtain Worker's Compensation insurance and other liability insurance as it may deem desirable, insuring each Owner, the Master Association, the Board and Manager, against liability in connection with the Master Association Property. The Board may also obtain such errors and omissions insurance, indemnity bonds, fidelity insurance and other insurance as it deems advisable, insuring the Board, the Master Association's officers and the Manager against liability for any act or omission in carrying out their obligations hereunder, or resulting from their membership on the Board or on any committee thereof. However, fidelity insurance coverage which names the Master Association as an obligee must be obtained by or on behalf of the Master Association for any Person handling the Master Association funds, including, but not limited to, Master Association officers, directors, employees and agents and Manager employees, whether or not such Persons are compensated for their services, in an amount not less than the estimated maximum of funds, including reserve funds, in the Master Association's or Manager's custody during the term of the insurance. The aggregate amount of such insurance coverage may not be less than one-fourth (1/4) of the Annual Common Assessments on all Lots and Condominiums in the Properties, plus reserve funds. In addition, the Master Association shall continuously keep in effect such casualty, flood and liability insurance and fidelity insurance coverage meeting the requirements for developments such as the Properties established by FNMA, GNMA and FHLMC, so long as any of them is a Mortgagee or an Owner of a Lot or Condominium in the Properties, except to the extent such coverage is not reasonably available or has been waived in writing.

10.5 NOTICE OF EXPIRATION REQUIREMENTS.

If available, each insurance policy the Master Association keeps must contain a provision that said policy may not be canceled, terminated, materially modified or allowed to expire by its terms, without ten (10) to thirty (30) days' prior written notice to the Board, Declarant, and to each Owner and Beneficiary, insurer and guarantor of a first Mortgage who has filed a written request with the carrier for such notice, and every other Person in interest who requests such notice of the insurer.

ARTICLE XI RIGHTS OF MORTGAGEES

This Article gives various rights to lenders.

11.1 GENERAL PROTECTIONS.

Notwithstanding any other provision of this Master Declaration, no amendment or violation of the Master Declaration defeats or renders invalid the rights of the Beneficiary under any Mortgage made in good faith and for value, provided that after the foreclosure of any such Mortgage such Lot or Condominium will remain subject to this Master Declaration. For purposes of the Governing Documents, "first Mortgage" means a Mortgage with first priority over other Mortgages on a Lot or Condominium, and "first Mortgagee" means the Beneficiary of a first Mortgage. For purposes of any provisions of the Governing Documents which require the vote or approval of a specified percentage of first Mortgagees, such vote or approval is determined based upon one (1) vote for each Lot or Condominium encumbered by each such first Mortgage. In order to induce VA, FHA, FHLMC, GNMA and FNMA to participate in the financing of the sale of Lots and Condominiums, the following provisions are added hereto (and to the extent these added provisions conflict with any other provisions of this Declaration or any other of the Governing Documents, these added provisions control):

11.2 WRITTEN NOTIFICATION.

Each Beneficiary, insurer and guarantor of a first Mortgage encumbering at least one Lot or Condominium, upon filing a written request for notification with the Board, is entitled to written notification from the Master Association of:

(a) any condemnation or casualty loss which affects either a material portion of the Properties or the Lots or Condominiums securing the respective first Mortgage; and

(b) any delinquency of sixty (60) days or more in the performance of any obligation under the Governing Documents, including the payment of Assessments or charges owed by the Owner(s) of the Lots or Condominiums securing the respective first Mortgage, which notice each Owner consents to and authorizes; and

(c) a lapse, cancellation, or material modification of any policy of insurance or fidelity insurance kept by the Master Association; and

(d) any abandonment or termination of the Master Association.

11.3 RIGHT OF FIRST REFUSAL.

Each Owner, including each first Mortgagee of a Mortgage encumbering any Lot or Condominium which obtains title to such Lot or Condominium 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" created or purported to be created by the Governing Documents.

11.4 ACQUISITION BY MORTGAGEE.

Each first Mortgagee of a Mortgage encumbering any Lot or Condominium who obtains title to such Lot or Condominium pursuant to the remedies provided in such Mortgage or by foreclosure of such Mortgage shall take title to such Lot or Condominium free of any claims for unpaid Assessments or charges against such Lot or Condominium which accrued prior to the time such Mortgagee acquires title to such Lot or Condominium.

11.5 RIGHTS UPON REQUEST.

All Beneficiaries, insurers and guarantors of first Mortgages, upon written request to the Master Association, shall have the right to:

- (a) examine current copies of the Master Association's books, records and financial statements and the Governing Documents during normal business hours; and
- (b) receive written notice of all meetings of Neighborhood Representatives; and
- (c) designate in writing a representative who shall be authorized to attend all meetings of Neighborhood Representatives.

11.6 PAYMENTS OF DELINQUENT AMOUNTS.

First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Master Association Property and may pay any overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for Master Association Property and first Mortgagees making such payments shall be owed immediate reimbursement therefor from the Master Association.

11.7 CONTRACTS.

The Board may enter into such contracts or agreements on behalf of the Master Association as are required in order to satisfy the guidelines or requirements of VA, FHA, FHLMC, FNMA, GNMA or any similar entity, so as to allow for the purchase, insurance or guaranty, as the case may be, by such entities of first Mortgages encumbering Lots and Condominiums. Each Owner agrees that it will benefit the Master Association and its Members, as a class of potential Mortgage borrowers and potential sellers of their Lots and Condominiums, if such agencies approve the Properties as a qualifying subdivision under their respective policies, Community Guidelines. Each Owner authorizes his Mortgagees to furnish information to the Board concerning the status of any Mortgage encumbering a Lot or Condominium.

**ARTICLE XII
ENFORCEMENT**

This Article establishes procedures for enforcing the Governing Documents, collecting delinquent assessments and resolving disputes with the Declarant.

12.1 ENFORCEMENT OF RESTRICTIONS.

All disputes arising under the Governing Documents, other than those described in Section 12.2, Section 12.4, shall be resolved as follows:

12.1.1 Violations Identified by the Master Association.

If the Board determines that there is a violation of the Governing Documents, or the Aesthetic Review Committee determines that an Improvement which is the responsibility of an Owner or Neighborhood Association needs installation, maintenance, repair, restoration or painting, then the Board shall give written notice to the responsible Owner or Neighborhood Association identifying (i) the condition or violation complained of, and (ii) the length of time the Owner or

Neighborhood Association has to remedy the violation including, if applicable, the length of time the Owner or Neighborhood Association has to submit plans to the Aesthetic Review Committee and the length of time the Owner or Neighborhood Association has to complete the work proposed in the plans submitted to the Aesthetic Review Committee. If an Owner or Neighborhood Association does not perform such corrective action as is required by the Board within the allotted time, the Board, after Notice and Hearing, may remedy such condition or violation complained of, and the cost thereof shall be charged to the Owner or Neighborhood Association as a Compliance Assessment.

If the violation involves nonpayment of an Assessment, then the Board may collect such delinquent Assessment pursuant to the procedures set forth in Section 12.2.

12.1.2 Violations Identified by an Owner or Neighborhood Association.

If an Owner or Neighborhood Association alleges that another Owner, other Person, or Neighborhood Association is violating the Governing Documents (other than nonpayment of an Assessment), the complaining Owner or Neighborhood Association must first submit the matter to the Board for Notice and Hearing before the complaining Owner or Neighborhood Association may resort to litigation.

12.1.3 Legal Proceedings.

Failure of a Neighborhood Association or an Owner, or any other Person, to comply with any of the terms of the Governing Documents is grounds for relief which may include an action to recover sums due for damages, injunctive relief, foreclosure of any lien, or any combination thereof; however, the procedures established in Sections 12.1.1 and 12.1.2 must first be followed, if they are applicable.

12.1.4 Limitation on Expenditures.

The Master Association may not incur litigation expenses, including attorneys' fees, or borrow money to fund litigation, where the Master Association initiates legal proceedings or is joined as a plaintiff in legal proceedings, unless the Master Association first obtains the consent of the Members (excluding the voting power of any Owner who would be a defendant in such proceedings). Such approval is not necessary if the legal proceedings are initiated (i) to enforce the use restrictions contained in Article II, (ii) to enforce the architectural and landscaping control provisions contained in Article IV, (iii) to collect any unpaid Assessments levied pursuant to the Governing Documents, (iv) for a claim, the total value of which is less than Two Hundred Thousand Dollars (\$200,000), or (v) as a cross-complaint or counter-claim in litigation to which the Master Association is already a party. If the Master Association decides to use or transfer reserve funds or borrow funds to pay for any litigation, the Master Association must notify its Members of the decision by mail. Such notice shall provide an explanation of why the litigation is being initiated or defended, why operating funds cannot be used, how and when the reserve funds will be replaced or the loan will be repaid, and a proposed budget for the litigation. The notice must state that the Members have a right to review an accounting for the litigation which will be available at the Master Association's office. The accounting shall be updated monthly.

12.1.5 Additional Remedies.

The Board may adopt a schedule of reasonable fines or penalties which, in its reasonable discretion, it may assess against an Owner or Neighborhood Association for the failure of such Owner, or of a resident of or visitor to such Owner's Lot or Condominium, or Neighborhood Association to comply with the Governing Documents. The Board may Record a Notice of Noncompliance for any violation of the Governing Documents if permitted by law.

12.1.6 No Waiver.

Failure to enforce any provision of the Master Declaration hereof does not waive the right to enforce that provision, or any other provision of the Master Declaration.

12.1.7 Right to Enforce.

The Board or any Owner (not at the time in default hereunder) may enforce the Governing Documents as described in this Article. Each remedy provided for in the Governing Documents is cumulative and not exclusive or exhaustive.

12.2 NONPAYMENT OF ASSESSMENTS.

12.2.1 Remedies.

Any installment of an Assessment is delinquent if not paid within ten (10) days of the due date established by the Board. Any Assessment installment not paid within thirty (30) days after the due date, plus all reasonable costs of collection (including attorneys' fees) and late charges as provided in this Master Declaration bears interest at the maximum rate permitted by law commencing from the date the Assessment becomes due until paid. The Board may also require the delinquent Owner to pay a late charge as set in the Community Guidelines. The Master Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot or Condominium. The Master Association may Record a notice of lien against the delinquent Lot or Condominium. The Master Association need not accept any tender of a partial payment of an Assessment installment and all costs and attorneys' fees attributable thereto, and any acceptance of any such tender does not waive the Master Association's right to demand and receive full payments thereafter.

12.2.2 Foreclosure Sale.

The Master Association may exercise any non-judicial remedy available under Utah law to foreclose the lien, including exercising a private power of sale. A sale to foreclose a Master Association lien may be conducted by the Board, its attorneys or other Persons authorized by the Board. The Master Association, through duly authorized agents, may bid on the Lot or Condominium at foreclosure sale, and acquire and hold, lease, encumber and convey the same. Upon completion of the foreclosure sale, the Master Association or the purchaser at the sale may file suit to secure occupancy of the defaulting Owner's Lot or Condominium, and the defaulting Owner shall be required to pay the reasonable rental value of the Lot or Condominium during any period of continued occupancy by the defaulting Owner or any Persons claiming under the defaulting Owner.

12.2.3 Cumulative Remedies.

All remedies the Master Association has available in connection with collection of delinquent Assessments are cumulative and not exclusive. A suit to recover a money judgment against an

Owner may be maintained without foreclosing or waiving the Master Association's lien and right to foreclose the lien.

12.2.4 Assessments After Foreclosure.

After a Beneficiary or other Person obtains title to a Lot or Condominium by judicial foreclosure or by means set forth in a Mortgage, the Lot or Condominium shall remain subject to the Master Declaration and the payment of all installments of Assessments accruing after the date the Beneficiary or other Person obtains title.

12.2.5 Priority of Assessment Lien.

The transfer of title to any Lot or Condominium does not affect the Assessment lien, except that the transfer of such title pursuant to judicial or non-judicial foreclosure of a first Mortgage extinguishes the lien of such Assessments as to amounts which became due prior to such transfer. No transfer of title relieves such Lot or Condominium from lien rights for any Assessments thereafter becoming due. No Person who obtains title to a Lot or Condominium pursuant to a judicial or non-judicial foreclosure of the first Mortgage is liable for the share of the Common Expenses or Assessments chargeable to such Lot or Condominium which became due prior to the acquisition of title to the Lot or Condominium by such Person. Such unpaid share of Common Expenses or Assessments is a Common Expense collectible from all of the Owners including such Person. Liens for Assessments imposed by the Master Association have priority over liens for Assessments imposed by the Neighborhood Associations.

12.2.6 Receivers.

In addition to the foreclosure and other remedies granted the Master Association in this Master Declaration, each Owner conveys to the Master Association all of such Owner's right, title and interest in all rents, issues and profits derived from and appurtenant to such Lot or Condominium, subject to the right, power and authority of the Master Association to collect and apply such rents, issues and profits to any delinquent Assessments owed by such Owner, reserving to the Owner the right, prior to any default by the Owner in the payment of Assessments, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default the Master Association may, either in person, by agent or by receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness secured by the lien described in this Master Declaration, (a) enter and take possession of the Lot or Condominium, (b) in the Master Association's name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and (c) apply the same, less allowable expenses, to any delinquencies of the Owner hereunder, and in such order as the Master Association may determine. The entering upon and taking possession of the Lot or Condominium, the collection of rents, issues and profits and the application thereof, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

12.3 DISPUTES WITH DECLARANT PARTIES.

Any disputes (each, a "Dispute") between (a) the Master Association, any Neighborhood Association or any Owners, and (b) the Declarant, any Neighborhood Builder, or any director, officer, partner, shareholder, member, employee, representative, contractor, subcontractor, design professional or agent of the Declarant or any Neighborhood Builder (collectively "Declarant Parties") arising under this Declaration or relating to the Properties, including

disputes regarding latent or patent construction defects, but excluding actions taken by the Master Association against Declarant to collect delinquent Assessments, and disputes solely between Declarant and a Neighborhood Builder involving contracts for purchase and sale of any portion of the Properties, where the amount in controversy is greater than Five Thousand Dollars (\$5,000), shall be subject to the following provisions:

(a) **Notice.** Any Person with a Dispute shall give written notice of the Dispute by personal or mail service as authorized by the Code of Civil Procedure to the party to whom the Dispute is directed (“**Respondent**”) describing the nature of the Dispute and any proposed remedy (the “**Dispute Notice**”).

(b) **Right to Inspect and Correct.** Commencing on the date the Dispute Notice is delivered to the Respondent and continuing until the Dispute is resolved, the Respondent and its representatives have the right to (i) meet with the party alleging the Dispute at a reasonable time and place to discuss the Dispute, (ii) enter the Properties to inspect any areas that are subject to the Dispute, and (iii) conduct inspections and testing (including destructive or invasive testing) in a manner deemed appropriate by the Respondent. If Respondent elects to take any corrective action, Respondent and its representatives shall be provided full access to the Properties to take and complete the corrective action. Respondent is not obligated to take any corrective action. Respondent, with the consent of Declarant, has the right to select the corrective action Respondent believes is appropriate.

(c) **Mediation.** If the Dispute is not resolved within ninety (90) days after the Respondent receives the Dispute Notice, any party may submit the Dispute to mediation by delivering a request for mediation (“**Mediation Notice**”) in the same manner as allowed for delivery of the Dispute Notice. The Dispute shall be mediated pursuant to (i) the American Arbitration Association (“**AAA**”) mediation procedures in existence when the Dispute Notice is delivered, as modified by this Section, or (ii) the mediation procedures of any successor to the AAA in existence when the Dispute Notice is delivered, as modified by this Section, or (iii) mediation procedures approved by the parties of any entity offering mediation services that is acceptable to the parties to the Dispute (“**Parties**”). Except as provided in Section 12.4.5, no Person shall commence litigation regarding a Dispute without complying with this Section 12.4.3.

(i) **Selection of Mediator.** The mediator shall be selected within sixty (60) days from delivery of the Mediation Notice. The mediator shall be selected by mutual agreement of the Parties. If the parties cannot agree on a mediator, the mediator shall be selected by the entity providing the mediation service. No Person shall serve as a mediator in any Dispute in which the Person has any financial or personal interest in the result of the mediation, except by the written consent of all Parties. Before accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process.

(ii) **Position Letter; Pre-Mediation Conference.** No later than sixty (60) days after selection of the mediator, each party to the Dispute shall submit a letter (“**Position Statement**”) containing (i) a description of the party’s position concerning the issues that need to be resolved, (ii) a detailed description of the defects allegedly at issue, and (iii) a

suggested plan of repair, remediation or correction. The mediator may schedule a pre-mediation conference. All Parties shall attend unless otherwise mutually agreed. The mediation shall be commenced within twenty (20) days after submittal of all Position Statements and shall be concluded within fifteen (15) days after the mediation began unless either (a) the mediator extends the mediation period, or (b) the Parties mutually agree to extend the mediation period. The mediation shall be held in the City or another place mutually acceptable to the parties.

(iii) **Conduct of Mediation.** The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate to achieve the goal of settling the Dispute. The mediator is authorized to conduct joint and separate meetings with the Parties and to make oral and written recommendations for settlement. The mediator may also obtain expert advice concerning technical aspects of the Dispute, provided the parties agree to and do assume the expenses of obtaining such advice. The mediator shall not have the authority to impose a settlement on the parties.

(iv) **Application of Evidence Code.** The Evidence Code shall be applicable to the mediation process. Use and disclosure of statements, evidence and communications offered or made in the course of the mediation shall be governed by these sections, including the sections which preclude use of material in future proceedings and the sections which provide for confidentiality of material.

(v) **Parties Permitted at Mediation.** Persons other than the parties, their liability insurers, Declarant, attorneys for the parties, the liability insurers and Declarant and the mediator may attend mediation sessions only with the permission of the parties and the consent of the mediator. Declarant has the right to attend the mediation session even if Declarant is not one of the parties.

(vi) **Record.** There shall be no stenographic, video or audio record of the mediation process.

(vii) **Expenses.** Each party shall bear its own attorneys' fees and costs incurred in connection with the mediation. All other expenses of the mediation including the fees charged by the mediator and the cost of any proof or expert advice requested by the mediator shall be shared equally by the parties unless they agree otherwise. This provision does not modify any provision of a contract between Declarant and any Declarant Party requiring indemnification or establishing a different allocation of costs between the Declarant and the Declarant Party.

(d) **Judicial Reference.** If a Dispute remains unresolved after the mediation required by Section 12.3(c) is completed, any of the Parties may file a lawsuit, provided that the Master Association, or the Neighborhood Association, as applicable, must obtain the vote or written consent of Owners other than Declarant who represent not less than sixty-seven percent (67%) of the voting power (excluding the voting power of Declarant) of the Master Association or the Neighborhood Association, as the case may be, prior to filing a lawsuit in a Dispute with Declarant or a Declarant Party. All lawsuits regarding Disputes must be resolved by general judicial reference, as modified by this Section 12.3(d). The Parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the

judicial reference proceeding. No party shall be required to participate in the judicial reference proceeding if all parties against whom such party would have necessary or permissive cross-claims or counterclaims will not or cannot be joined in the judicial reference proceeding. The general referee shall have the authority to try all issues of fact and law and to report a statement of decision to the court. The referee shall be the only trier of fact and law in the reference proceeding, and shall have no authority to further refer any issues of fact or law to any other Person unless (a) all parties to the judicial reference proceeding consent, or (b) the referee determines that a conflict of interest or similar situation has arisen which would make it inappropriate for the referee to act as the trier of fact or law concerning an issue or matter. In the second alternative, an alternative judicial referee shall be selected in accordance with Section 12.3(d) solely for resolving or rendering a decision concerning the issue or matter involved in the conflict.

(i) **Place.** The proceedings shall be heard in the City.

(ii) **Referee.** The referee shall be a retired judge with substantial experience in the type of matter in dispute and without any relationship to the parties or interest in the Properties, unless the parties agree otherwise. The parties to the judicial reference proceeding shall meet to select the referee no later than thirty (30) days after service of the initial complaint on all defendants named in the complaint. Any dispute regarding selecting the referee shall be resolved by the court in which the complaint is filed.

(iii) **Commencement and Timing of Proceeding.** The referee shall commence the proceeding at the earliest convenient date and shall conduct the proceeding without undue delay.

(iv) **Pre-hearing Conferences.** The referee may require pre-hearing conferences.

(v) **Discovery.** The parties to the judicial reference proceeding shall be entitled only to limited discovery, consisting of the exchange of the following: (i) witness lists, (ii) expert witness designations, (iii) expert witness reports, (iv) exhibits, (v) reports of testing or inspections, and (vi) briefs. Any other discovery authorized in the Utah Code of Civil Procedure shall be permitted by the referee upon a showing of good cause or based on the consent of all parties to the judicial reference proceeding.

(vi) **Motions.** The referee shall have the power to hear and dispose of motions, including motions relating to discovery, provisional remedies, demurrers, motions to dismiss, motions for judgment on the pleadings and summary judgment and/or adjudication motions, in the same manner as a trial court judge. The referee shall also have the power to adjudicate summarily issues of fact or law including the availability of remedies whether or not the issue adjudicated could dispose of an entire cause of action or defense.

(vii) **Record.** A stenographic record of the hearing shall be made which shall remain confidential except as may be necessary for post-hearing motions and any appeals.

(viii) **Statement of Decision.** The referee's statement of decision shall contain an explanation of the factual and legal basis for the decision. The decision of the referee shall stand as the decision of the court, and upon filing of the statement of decision with the clerk of the court, judgment may be entered thereon in the same manner as if the Dispute had been tried by the court.

(ix) **Limit on Remedies/Prohibition on the Award of Punitive Damages.** The referee may not award punitive damages. In addition, as further provided below, the right to punitive damages is waived by the parties. The referee may grant all other legal and equitable remedies and award compensatory damages in the judicial reference proceeding.

(x) **Post-hearing Motions.** The referee may rule on all post-hearing motions in the same manner as a trial judge.

(xi) **Appeals.** The decision of the referee shall be subject to appeal in the same manner as if the Dispute had been tried by the court.

(xii) **Expenses.** Each party shall bear its own attorneys' fees and costs incurred in connection with the judicial reference proceeding. All other expenses of the judicial reference proceeding including the cost of the stenographic record shall be shared equally by the parties to the judicial reference proceeding unless they agree otherwise. This provision does not modify any provision of a contract between Declarant and any Declarant Party requiring indemnification or establishing a different allocation of costs between the Declarant and the Declarant Party.

(e) **Statutes of Limitation.** Nothing in this Section 12.3 shall be considered to toll, stay, reduce or extend any applicable statute of limitations, provided, however, that Declarant, the Declarant Parties, the Master Association, any Neighborhood Association and any Owner may commence a legal action which in the good faith determination of that Person is necessary to preserve that Person's rights under any applicable statute of limitations so long as no further steps in processing the action are taken except those authorized in this Section 12.3.

(f) **Agreement to Dispute Resolution; Waivers of Jury Trial and Award of Punitive Damages.** Declarant, the Master Association and each Owner agree to use the procedures established in this Section 12.3 to resolve all Disputes and waive their rights to resolve Dispute in any other manner. Declarant, the Master Association, each Neighborhood Association and each Owner acknowledge that by agreeing to resolve all disputes as provided in this Section 12.4, they are giving up their right to have Disputes tried before a jury and waiving their rights to an award of punitive damages.

ARTICLE XIII DISCLOSURES

Because much of the information included in this Article has been obtained from other sources (e.g., governmental and other public agencies and public records) and because much of

the information is subject to change for reasons beyond the control of Declarant, the Neighborhood Builders and the Master Association, the Declarant, the Neighborhood Builders and the Master Association do not guarantee the accuracy or completeness of any of the information disclosed in this Article. Further, neither Declarant nor any Neighborhood Builder nor the Master Association undertakes any obligation to advise Owners or prospective purchasers of any changes affecting the disclosures in this Article. All persons should make specific inquiries or investigations to determine the current status of the following information.

13.1 NO REPRESENTATIONS OR WARRANTIES.

No representations or warranties of any kind, express or implied, have been given or made by Declarant, the Neighborhood Builders, the Master Association or their agents or employees in connection with the Properties, its physical condition, zoning, compliance with laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation as a master planned community, except (i) as specifically and expressly set forth in this Master Declaration, and (ii) as expressly agreed in writing between the parties to the contrary.

13.2 SECURITY AND PRIVACY DISCLAIMER.

If security personnel are retained by the Master Association, they are not intended to provide security for Persons, personal property or Lots or Condominiums within the Properties. Declarant, the Neighborhood Builders and the Master Association do not undertake to provide security for the Properties nor do they make any representations or warranties concerning privacy and safety within the Properties.

13.3 OFFERS OF DEDICATION.

Certain areas of the Master Association Property are or will be subject to irrevocable offers of dedication as shown on the recorded plats for the Properties. The Local Governmental Agency may accept an offer of dedication and assume responsibility for these portions of the Master Association Property at any time.

13.4 NONLIABILITY.

Each Owner acknowledges and agrees that neither the Declarant nor any Neighborhood Builder nor the Master Association shall be liable or responsible for any damage to Improvements that have been constructed or modified by another Owner or that is the result of Improvements that have been constructed or modified by another Owner. Improvements may not be installed, constructed or modified without the assistance of qualified consultants.

13.5 COMMUNITY ENHANCEMENT FEE.

Community Enhancement Fee Agreements (each, an "Agreement") encumbering portions of the Properties have been Recorded in Official Records. Pursuant to these Agreements, a community enhancement fee equal to a percentage of the sale price is paid on most transfers of Condominiums and Lots encumbered by the Agreement. The community enhancement fee is paid to Traverse Mountain Community Services to be used for purposes described in the Agreements. Some transfers are exempt from the community enhancement fee. Each Condominium and Lot encumbered by an Agreement is bound by the terms of the Agreement.

13.6 INTRANET.

Declarant may establish a community-wide intranet network for the Properties (the "Intranet"). If established, the Intranet will most likely be developed, hosted, maintained, serviced and updated by a provider pursuant to a contract to be entered into between the Master Association and (directly or indirectly) such provider. The Declarant, its affiliates and related parties may have an ownership interest of any kind in the provider. It is the intent as of the date of recordation of this Master Declaration that, if established, such Intranet shall provide "peer to peer" connectivity among Owners and Owners and occupants of the Properties with appropriate firewall protections between commercial users and residents of the Properties. If established, users of the Intranet may have access to, and be able to engage in commercial transactions with merchants or others who are participating in such Intranet through a local area network without having to access the Internet. Costs incurred by the Master Association in developing, maintaining and operating the Intranet will most likely be included in the Assessments payable to the Master Association by each Owner. If such costs are included, each Owner will be responsible for paying his or her portion of Assessments attributable to the Intranet regardless of whether such Owner intends to or actually uses or derives any significant benefit or consideration from the services offered by such Intranet; provided, however, that property located within a Multi-Family Area may be exempted from paying such portion in the Supplemental Declaration therefor executed by Declarant. The development and establishment of the Intranet will be dependent on installation and integration of sophisticated Telecommunications Facilities, and accordingly, no representations or warranties are made in this Master Declaration by the Declarant or the Master Association regarding the actual network that may ultimately be established for the Properties.

13.7 NATURE OF THE COMMUNITY.

The Properties are a master planned community being developed in accordance with rights granted to Declarant by the Area Plan and/or the Development Agreement. The community is planned to be composed of many housing types and possibly commercial and other properties. Many, but possibly not all, of these properties will be encumbered by the Master Declaration and managed by the Master Association. The Declarant, in its discretion, will determine which properties are annexed to the real property encumbered by the Master Declaration and which properties are developed separately.

Completion of the Properties will take many years. Buyer preferences, economic conditions and government approvals can change. Accordingly, Declarant cannot guarantee that the Properties will be completed in the form originally proposed or in accordance with any interim modifications of the original planning concept. Declarant gives no assurance that any area presently planned for a particular housing type or use will actually be developed with that housing type or use or in accordance with any planned time schedule. Declarant has the right to build different housing types and different uses in connection with exercising Declarant's rights granted in the Area Plan and/or the Development Agreement, all of which can be amended but only with Declarant's consent and approval of the City. Declarant also has the right to construct energy projects at the higher elevations of the Properties. Declarant has the right to pursue to completion any electric energy facilities, roads and infrastructure that Declarant deems necessary to use the full potential of the 26 acres that front the Alpine Highway (SR-92).

The form, nature and extent of all future development of both private and public facilities within the Properties is subject to regulation by all applicable government agencies, which may

or may not exercise their authority in accordance with the desires of Declarant and which are, in any case, not within the control of the Declarant. Accordingly, all plans, models, displays and other materials are illustrative only and do not constitute a representation on the part of Declarant that any particular improvements will, in fact, be built or, if built, that such Improvements will be of the type and in the location shown in any plans, models, displays and other materials.

Declarant only intends to sell to Neighborhood Builders and buyers who (a) support construction and development of the Properties, (b) understand that Declarant has the right to make changes to any plans for the Properties or the Annexable Area without the consent of the Neighborhood Builders, Owners and buyers, (c) understand that Declarant has the right to exercise all rights granted under the Area Plan and/or the Development Agreement, in Declarant's sole discretion, and (d) agree that Declarant has relied on their representation to Declarant that they understand and agree to everything listed in this sentence. Owners and Neighborhood Builders agree that they will support and not oppose (a) future applications for government approvals or future development of the Properties, which are consistent with Declarant's plan, as modified from time to time, and (b) future exercise of Declarant's rights granted under the Area Plan and/or the Development Agreement.

13.8 MASTER ASSOCIATION BUDGETS.

Initial Master Association budgets are prepared by an independent professional and are based on information available at the date of preparation. Budgets will change from time to time due to changing maintenance requirements, geographic impacts that are not anticipated when the budgets were prepared, the demand by Owners for different, higher, or enhanced services or standards of maintenance and/or unforeseen or unanticipated circumstances. In addition, actual maintenance costs may vary from the costs allocated in the Declarant's Budget; therefore, there is no representation that the initial budgets reflect actual costs of operating the Master Association.

ARTICLE XIV GENERAL PROVISIONS

Communities are dynamic and constantly evolving as circumstances, technology, needs, desires and laws change, and as the surrounding area changes. The Properties and the Governing Documents must be able to adapt to these changes while protecting the things that make the Properties unique. This Article includes provisions that will allow the Properties to adapt to different changes.

14.1 TERM.

This Master Declaration continues in full force unless a Declaration of Termination satisfying the requirements of an amendment to the Master Declaration as set forth in Section 14.2 is Recorded.

14.2 TERMINATION AND AMENDMENT.

Notice of the subject matter of a proposed amendment to, or termination of, this Master Declaration in reasonably detailed form shall be included in the notice of any meeting or election of the Master Association at which a proposed amendment or termination is to be considered.

14.2.1 **City Approval.**

All amendments must be approved by the City Planning Commission.

14.2.2 **Neighborhood Representative Approval.**

All amendments except those listed in Section 14.2.2 can be adopted by Neighborhood Representatives holding at least a majority of the voting power of the Master Association.

14.2.3 **Member Approval.**

The following amendments to this Master Declaration must be approved by the Members:

(a) Any amendment terminating this Master Declaration or the Master Association.

(b) Amendments to Sections 2.3.10, 2.5, 4.3, 7.3, 12.1.4, 12.3, 12.4, 14.2.1, and 14.2.2 and Articles XVI and XVII.

14.2.4 **Mortgagee Approval.**

In addition to the required notice and consent of Members and Declarant, the Beneficiaries of fifty-one percent (51%) of the first Mortgages who have requested the Master Association to notify them of proposed action requiring the consent of a specified percentage of first Mortgagees must approve the following amendments to the Governing Documents.

(a) Any amendment which affects or purports to affect the validity or priority of Mortgages or the rights or protection granted to Beneficiaries, insurers and guarantors of first Mortgages in this Master Declaration.

(b) Any amendment which would require a Mortgagee after it has acquired a Lot or Condominium through foreclosure to pay more than its proportionate share of any unpaid Assessment accruing before such foreclosure.

(c) Any amendment which would or could result in a Mortgage being canceled by forfeiture or in a Condominium not being separately assessed for tax purposes.

(d) Any amendment relating to the insurance provisions as set out in Article X, or to the application of insurance proceeds as set out in Article IX, or to the disposition of any money received in any taking under condemnation proceedings.

(e) Any amendment which would or could result in partition or subdivision of a Condominium in any manner inconsistent with this Master Declaration.

(f) Any amendment which would subject any Owner to a right of first refusal or other such restriction if such Lot or Condominium is proposed to be sold, transferred or otherwise conveyed.

(g) Any amendment concerning:

(A) Voting rights;

- (B) Rights to use the Master Association Property;
- (C) Reductions in reserves for maintenance, repair and replacement of the Master Association Property;
- (D) Responsibility for maintenance, repairs and replacements;
- (E) Redefinition of boundaries of any Condominium unit;
- (F) Reallocation of interests in the Master Association Property or rights to its use;
- (G) Convertibility of Master Association Property into Condominium units or Condominium units into Master Association Property;
- (H) Imposition of restrictions on leasing of Lots or Condominiums;
- (I) Establishment of self-management by the Master Association if professional management has been required by the Governing Documents or any Beneficiary of a first Mortgage;
- (J) Expansion or contraction of the Properties or addition, annexation or deannexation of real property to or from the Properties;
- (K) Increases in Assessments that raise the previously assessed amount by more than twenty-five percent (25%), Assessment liens, or the priority of such liens; or
- (L) Restoration or repair of the Properties (after damage or partial condemnation) in a manner other than that specified in this Master Declaration.

14.2.5 **Termination.**

No termination of this Master Declaration is effective unless it is also approved in advance (a) by the City Planning Commission, and (b) either by fifty-one percent (51%) of the Beneficiaries of the first Mortgages on all of the Lots and Condominiums in the Properties who have submitted a written request to the Master Association that they be notified of proposed actions requiring the consent of a specified percentage of such Beneficiaries (if termination is proposed due to substantial destruction or condemnation of the Properties) or by sixty-seven percent (67%) of such Beneficiaries (if termination is for reasons other than such substantial destruction or condemnation).

14.2.6 **Notice to Mortgagees.**

Each Beneficiary of a first Mortgage which is sent written notice of a proposed amendment or termination of this Master Declaration by certified or registered mail with a return receipt requested shall be deemed to have approved the amendment or termination if the Beneficiary fails to submit a response to the notice within thirty (30) days after the date of the mailing receipt.

14.2.7 Certification of Amendments.

A copy of each amendment (excluding those amendments made pursuant to Section 14.2.7 and Section 14.2.8) shall be signed by at least two (2) Master Association officers. The amendment will be effective when a Certificate of Amendment is Recorded. The Certificate, signed and sworn to by at least two (2) officers of the Master Association that the requisite number of Owners or Neighborhood Representatives have either voted for or consented in writing to any termination or amendment adopted as provided above, when Recorded, is conclusive evidence of that fact. The Master Association shall keep in its files the record of all such votes or written consents for at least four (4) years. The certificate of any termination or amendment which requires the written consent of any of the Beneficiaries of first Mortgages must include a certification that the requisite approval of such first Mortgagees has been obtained. The certificate of any termination or amendment which requires the written consent of Declarant or is subject to Declarant's veto right must include Declarant's signature.

14.2.8 Amendment Before First Close of Escrow.

Notwithstanding any other provisions of this Section 14.2, at any time prior to the first Close of Escrow for a Lot or Condominium in the Residential Area, Declarant may amend or terminate all or a portion of this Master Declaration by (a) obtaining the approval of the City Planning Commission, and (b) Recording a written instrument which effects the amendment or termination and is signed and acknowledged by Declarant alone.

14.2.9 Other Amendments.

Notwithstanding any other provisions of this Section 14.2, Declarant (for so long as Declarant or a Neighborhood Builder owns any portion of the Properties or the Annexable Territory) may unilaterally amend all or a portion of this Master Declaration by Recording a written instrument signed by Declarant and approved by the City Planning Commission in order to (i) conform this Master Declaration to applicable law, (ii) conform this Master Declaration to the guidelines or requirements of VA, FHA, FNMA, GNMA, FHLMC or the City, (iii) correct typographical errors, (iv) change any exhibit to this Master Declaration or portion of an exhibit depicting property that is not part of a Phase for which assessments have commenced, or (v) change any exhibit to conform to as-built conditions.

14.2.10 Amendment by the Board.

Notwithstanding any other provisions of this Section 14.2, the Board may amend this Master Declaration by Recording a written instrument signed by two officers of the Master Association certifying that the Board approved the amendment in order to (i) conform this Master Declaration to applicable law, (ii) correct typographical errors, and (iii) change any exhibit to this Master Declaration or portion of an exhibit to conform to as-built conditions. So long as Declarant or a Neighborhood Builder owns any portion of the Properties or the Annexable Territory, the Board must obtain Declarant's consent to any amendment the Board approves pursuant to this Section.

14.3 **NO PUBLIC RIGHT OR DEDICATION.**

Nothing in this Master Declaration constitutes a gift or dedication of all or any part of the Properties to the public, or for any public use.

14.4 CONSTRUCTIVE NOTICE AND ACCEPTANCE.

Every Person who owns, occupies or acquires any right, title, estate or interest in or to any Lot or Condominium or other portion of the Properties does consent and agree, and shall be conclusively deemed to have consented and agreed, to every limitation, restriction, easement, reservation, condition and covenant contained in this Master Declaration, whether or not any reference to the Governing Documents is contained in the instrument by which such Person acquired an interest in the Properties.

14.5 NOTICES.

Except as otherwise provided in this Master Declaration, notice to be given to an Owner must be in writing and may be delivered to the Owner or Mortgagee personally or by any system or technology designed to record and communicate messages, telegraph, facsimile, electronic mail, or other electronic means. Delivery of such notice to one (1) or more co-owners of a Lot or Condominium, to any general partner of a partnership or to a member of a limited liability company, constitutes delivery to all co-owners, the partnership or the limited liability company. Delivery of such notice to any officer or agent for the service of process on a corporation constitutes delivery to the corporation. Alternatively, notice may be delivered by regular United States mail, postage prepaid, addressed to the Owner or Mortgagee at the most recent address furnished by such Owner or Mortgagee to the Master Association. If an Owner does not furnish an address, notice may be sent to the street address of an Owner's Lot or Condominium. Such notice is deemed delivered three (3) business days after the time of such mailing, except for notice of a meeting of Members or of the Board, in which case the notice provisions of the Bylaws control. Any notice to be given to the Master Association may be delivered personally to any member of the Board, or sent by United States mail, postage prepaid, addressed to the Master Association at such address fixed and circulated to all Owners or sent by any system or technology designed to record and communicate messages, telegraph, facsimile, electronic mail, or other electronic means to such address or telephone number as the Board may establish.

14.6 ADDITIONAL PROVISIONS.

Notwithstanding the provisions contained in the Governing Documents, there may be provisions of various laws, including the federal Fair Housing Act codified at Title 42 United States Code, Sections 3601 et seq., which may supplement or override the Governing Documents. Declarant and the Neighborhood Builders make no representations or warranties regarding the enforceability of any portion of the Governing Documents.

14.7 MERGERS OR CONSOLIDATIONS.

Upon a merger or consolidation of the Master Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Master Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer and enforce the covenants, conditions and restrictions established by the Governing Documents, together with the covenants and restrictions established upon any other property, as one (1) plan.

**ARTICLE XV
LAND CLASSIFICATIONS**

The Properties are composed of many different types of properties. This Article describes the different classifications of land in the Properties. These classifications are used to establish use restrictions and various rights and obligations of the Owners of the different types of property in the Properties.

The Properties, including each portion of Annexed Territory described in a Supplemental Declaration, shall be assigned to one or more of the following land classifications. The Declarant has the right to create other area designations in Supplemental Declarations.

15.1 RESIDENTIAL AREA.

Phase 1 is classified as Residential Area. Phase 1 does not include any property in the Multi-Family Area or Commercial Area as of the date of Recordation of this Master Declaration.

15.2 MULTI-FAMILY AREA.

There is no Multi-Family Area in Phase 1.

15.3 MASTER ASSOCIATION PROPERTY.

The Master Association Property in Phase 1 is referred to in Section 1.39 and described or depicted on *Exhibit D*.

15.4 COMMON AREA.

There is no Common Area in Phase 1.

15.5 SPECIAL BENEFIT AREA.

Phase 1 is not a part of a Special Benefit Area.

15.6 NEIGHBORHOOD.

Phase 1 is a portion of the _____ Neighborhood.

**ARTICLE XVI
ANNEXATION OF ADDITIONAL PROPERTY**

Because the Properties may eventually be composed of many different properties, the Declarant has reserved the right to annex additional property to the property subject to this Master Declaration. The Master Association is also given the power to add additional property to the property subject to this Master Declaration.

Additional real property may be annexed to the Properties and such additional real property may become subject to this Master Declaration by any of the following methods:

16.1 ANNEXATIONS.

Declarant and Neighborhood Builders may, but shall not be required to add to the Properties all or any portion of the Annexable Territory by Recording a Supplemental Declaration

encumbering the portion of the Annexable Territory annexed thereby (“Annexed Territory”). Annexable Territory may be added to the Properties pursuant to Sections 16.4.1 and 16.4.2 without the approval of the Owners, Neighborhood Representatives, or the Board or the Master Association. All real property that is annexed to the Properties must be within the corporate limits of the City and within the Area Plan boundaries.

16.2 SUPPLEMENTAL DECLARATION CONTENT.

Each Supplemental Declaration annexing real property to the Properties shall contain at least the following provisions:

16.2.1 Master Declaration Reference.

A reference to this Master Declaration, which reference shall state the date of Recordation hereof and its Instrument number and relevant Recording data.

16.2.2 Extension of Comprehensive Plan.

A statement that the provisions of this Master Declaration shall apply to the Annexed Territory.

16.2.3 Description/Phases of Development.

A description of the Annexed Territory, including any Master Association Property. A Supplemental Declaration may cover one (1) or more Phases, as designated in such Supplemental Declaration.

16.2.4 Land Classifications.

The land classifications of the Annexed Territory as required by Article XV. The Supplemental Declaration may create new land classifications, areas of the Master Association Property reserved for the exclusive use of Owners, or areas of individually owned Lots or Condominiums to be maintained by the Master Association.

16.2.5 Special Benefit Areas.

The Supplemental Declaration covering a Lot or Condominium subject to a Special Benefit Area Assessment Component shall: (i) identify the Special Benefit Area, if existing, or describe the Special Benefit Area if proposed; (ii) identify the Lots or Condominiums covered by the Supplemental Declaration which are entitled to use the facilities of the Special Benefit Area or which are obligated to bear the exclusive or disproportionate maintenance of such Special Benefit Area and which shall be obligated to pay the Special Benefit Area Assessment Component attributable to such Special Benefit Area; and (iii) specify the Common Expenses comprising the Special Benefit Area Assessment Component attributable to such Special Benefit Area.

16.3 APPROVAL OF ANNEXATIONS.

Each Supplemental Declaration shall be signed by Declarant and by each Record owner of the Annexed Territory. For any annexation of property outside of the Annexable Territory, each Supplemental Declaration must be signed by the Record owner of the Annexed Territory and by an officer of the Master Association, certifying that the approval of the requisite percentage of Neighborhood Representatives (as applicable) has been obtained.

16.4 DEANNEXATION AND AMENDMENT.

16.4.1 By Declarant.

Declarant, with the consent of the City Planning Commission, may amend a Supplemental Declaration or delete all or a portion of a Phase from coverage of this Master Declaration and the jurisdiction of the Master Association, so long as Declarant is the Owner of all of such Phase. Declarant may also unilaterally delete any portion of the Annexable Territory from the Annexable Territory by Recording a Notice of Deletion.

16.4.2 By Neighborhood Builder.

A Neighborhood Builder may amend a Supplemental Declaration or delete all or any portion of a Phase from coverage of this Master Declaration and the jurisdiction of the Master Association, so long as (a) such Neighborhood Builder or Declarant and such Neighborhood Builder together are the Owners of all of such Phase, (b) Declarant has consented in writing to such amendment or deletion by executing the appropriate Notice of Deletion or amendment to the Supplemental Declaration, as applicable, and (c) the City Planning Commission has consented to the amendment or deletion.

16.5 OTHER ADDITIONS.

Unless covered by the authority in Sections 16.4.1 and 16.4.2, additional real property may be annexed to the Properties and brought within the general plan of this Master Declaration upon the approval by Neighborhood Representatives representing at least two-thirds (2/3) of the voting power of the Master Association.

16.6 RIGHTS OF ANNEXED TERRITORY MEMBERS.

Upon the Recording of a Supplemental Declaration containing the provisions as set forth in this Section, all provisions contained in this Master Declaration will apply to the Annexed Territory in the same manner as if it were originally covered by this Master Declaration, subject to the provisions of the applicable Supplemental Declaration. Thereafter, the rights, powers and responsibilities of the parties to this Master Declaration with respect to the Annexed Territory will be the same as with respect to the property originally covered .

ARTICLE XVII

DECLARANT AND NEIGHBORHOOD BUILDER RIGHTS AND EXEMPTIONS

Declarant reserves various rights in this Article to facilitate the smooth, orderly development of the Properties and to accommodate changes in the development plan that inevitably occur as a community the size of the Properties grows and matures.

17.1 INTEREST OF DECLARANT.

Phase 1 is a portion of a considerable amount of land which Declarant intends to develop into a master planned community. Declarant in cooperation with the City, has created a comprehensive plan for the development of the Properties which includes modern master-planning objectives which have been formulated for the common good within the community. Declarant, the Neighborhood Builders, or their successors and assigns intend, but are not obligated, to construct Residences and develop all of the Lots in the Properties. The completion of that work and sale,

resale, rental and other disposal of Lots is essential to the establishment and welfare of the Properties as a quality master planned community. Each Owner of a Lot which is part of the Properties acknowledges that Declarant has a substantial interest in assuring compliance with, and enforcement of, the covenants, conditions, restrictions and reservations contained in this Master Declaration and any Supplemental Declarations. This Article supersedes and controls over all other provisions of the Governing Documents as applied to Declarant and the Neighborhood Builders.

17.2 RIGHTS.

Declarant and the Neighborhood Builders have the following rights. Nothing in the Governing Documents limits and no Owner or the Master Association will interfere with Declarant's or any Neighborhood Builder's exercise of these rights. However, the rights are subject to compliance with state and Local Ordinances and standards unless specifically amended by the Development Agreement and/or the Area Plan.

17.2.1 Subdivision.

To subdivide and resubdivide any portion of the Properties and the Annexable Territory.

17.2.2 Sales.

To sell, resell, rent or re-rent any portion of the Properties and the Annexable Territory.

17.2.3 Development.

To complete excavation, grading, construction of Improvements and other development activities on the Properties and the Annexable Territory. Such activities may include, at Declarant's election, installing energy projects at the higher elevations of the Properties and exempting those projects from any provisions of the Governing Documents that may limit the projects' operations.

17.2.4 Construction.

Subject to approval of any applicable governmental agency, to alter construction plans and designs, to modify Improvements and to construct such additional Improvements as Declarant or a Neighborhood Builder (subject to Declarant's approval) deems advisable.

17.2.5 Signs.

To erect, construct and maintain on the Properties such structures, signs and displays reasonably necessary for the conduct of the business of completing the work and disposing of the Properties and the Annexable Territory.

17.2.6 Creating Additional Easements.

At any time prior to acquisition of title to a Lot or Condominium by a purchaser from Declarant or a Neighborhood Builder, to establish on that Lot, additional licenses, easements, reservations and rights-of-way to itself, to utility companies, or to others as reasonably necessary to the proper development and disposal of the Properties and the Annexable Territory.

17.2.7 Sales and Leasing.

To use the Master Association Property for access to the sales and leasing facilities of Declarant and Neighborhood Builders by prospective purchasers, sales agents, Declarant and Neighborhood Builders.

17.2.8 **Models and Offices.**

To use any structures or trailers/ mobile homes owned or leased by Declarant or Neighborhood Builders in the Properties as model home complexes, real estate sales or leasing offices.

17.2.9 **Modifications.**

Without the consent of the Neighborhood Builders or the Owners, to modify Declarant's or the Neighborhood Builders' development plan for the Properties, the Annexable Territory, or any portion thereof, including designating and redesignating Phases of Development and constructing Residences of larger or smaller sizes, values or of different types. However, any such proposed rephasing or modification of a development plan or construction by a Neighborhood Builder must be approved in advance by Declarant and by the City Planning Commission.

17.3 **EXEMPTION.**

Declarant and the Neighborhood Builders are exempt from all of the restrictions contained in Article II.

17.4 **EXEMPTION FROM DESIGN RESTRICTIONS.**

Declarant, Neighborhood Builders and any Person Declarant designates in a Supplemental Declaration is not subject to Aesthetic Review Committee approval with respect to their construction or development activities. Declarant's approval rights in the preceding sentence are in addition to any other rights of Declarant under other written agreements between Declarant and Neighborhood Builders. Declarant may exclude portions of the Properties from jurisdiction of the Aesthetic Review Committee by Supplemental Declaration. Declarant may establish an additional architectural review committee for any area exempted from the jurisdiction of the Aesthetic Review Committee.

17.5 **ASSIGNMENT OF RIGHTS.**

All or any portion of the rights of Declarant or a Neighborhood Builder in the Governing Documents may be assigned by Declarant or such Neighborhood Builder (with Declarant's consent), to any successor in interest to any portion of Declarant's or Neighborhood Builder's interest in any portion of the Properties or the Annexable Territory (including to any Neighborhood Builder) by an express written assignment which specifies the rights of Declarant or such Neighborhood Builder so assigned.

17.6 **EASEMENT RELOCATION.**

Master Association Property easements over real property the fee title to which has not been made subject to the Master Declaration ("**Interim Easement Area**") may be relocated, modified or terminated by Declarant to accommodate the final plan of development for the future Phase in which the Interim Easement Area is located. Such relocation, modification or termination shall be set forth in the Recorded instrument annexing fee title to the Interim Easement Area to the Master Declaration. No such relocation, modification or termination shall prevent access to any Lot or Condominium. Public utility easements may not be altered or relocated without the consent of the utility company that uses the easement.

17.7 DECLARANT'S REPRESENTATIVE.

The Master Association shall give Declarant all notices and other documents to which a Beneficiary is entitled pursuant to this Master Declaration. Commencing on the date on which Declarant no longer has an elected or appointed representative on the Board, and continuing until the date on which Declarant no longer owns a Lot or Condominium in the Properties or any portion of the Annexable Territory, the Master Association shall give Declarant written notice of all meetings of the Board as if Declarant were an Owner and Declarant shall be entitled to have a representative present at all such Board meetings ("**Declarant's Representative**"). The Declarant's Representative shall be present in an advisory capacity only and shall not be a Board member or have any right to vote on matters coming before the Board.

17.8 CONVERSION OF MULTI-FAMILY AREA.

The Owner of a Multi-Family Area Lot or Lots, in its sole discretion, may elect to convert all or any portion of its Multi-Family Area to a portion of the Residential Area pursuant to then applicable laws. In such event, effective upon the first Close of Escrow for the sale of a Lot or Condominium in each Phase of such converted Multi-Family Area, such Phase shall be deemed Residential Area; the Owners of Lots or Condominiums in such Phase of converted Multi-Family Area shall all be "Owners" as defined in this Master Declaration; such Lots or Condominiums shall be assessed in the same manner as other Residential Area Lots and Condominiums; the Owners of such Lots or Condominiums shall have the same voting rights as other Owners of the same class of Members; and such Lots and Condominiums, and the Owners thereof, shall be subject to all of the provisions of this Master Declaration in the same manner as the other Lots, Condominiums and Owners in the Residential Area. The conversion of Multi-Family Area pursuant to this Section shall not require the approval of the Neighborhood Representatives, the Master Association or the Members, nor require modifications to existing Multi-Family Area Improvements in order to conform them with the portions of the Governing Documents applicable to the Residential Areas. Any such proposed conversion must be approved in writing by Declarant for so long as Declarant owns (or holds a Mortgage on) any part of the Properties or Annexable Territory.

17.9 RELATIONSHIP TO OTHER RESTRICTIONS.

If any portion of the Governing Documents conflicts with any provision of this Article, the provision of this Article shall control. Supplemental Declarations may add to the rights and exemptions created in this Article, but may not limit the rights and exemptions created in this Article.

EXHIBIT A

**DESCRIPTION OR DEPICTION
OF ANNEXABLE TERRITORY**

Legal Description: FOX RIDGE

July 12, 2000

Beginning at intersection of the west line of the Micron property as described in a deed recorded in Book 3905, Page 444, Records of Utah County, Utah and the north right of way line of State Route 92, said point being South $00^{\circ}09'13''$ West, 855.61 feet along the west line of section 32 and South $89^{\circ}50'47''$ East, 1322.54 feet from the Southeast corner of Section 30, Township 4 South, Range 1 East, Salt Lake Base and Meridian; thence along the northerly right of way line of State Road 92 the following courses:

North $87^{\circ}51'12''$ West, 893.86 feet to a non-tangent curve to the left having a radius of 5841.38 feet thence southwesterly along said curve 1266.52 feet (chord bears

South $86^{\circ}01'47''$ West, 1264.04 feet) through a central angle of $12^{\circ}25'22''$; thence

South $79^{\circ}43'26''$ West, 752.26 feet to a curve to the right having a radius of 5646.95 feet; thence

westerly along said curve 777.29 feet (chord bears South $83^{\circ}40'02''$ West, 776.68 feet) through a central angle of $7^{\circ}53'12''$; thence South $87^{\circ}36'38''$ West, 2052.76 feet; thence leaving said right of

way line North $41^{\circ}37'36''$ West, 1115.22 feet; thence

North $46^{\circ}15'16''$ West, 204.62 feet; thence North $48^{\circ}31'00''$ West, 324.98 feet to a point on a line

100.00 feet easterly, measured at right angles, from the center of the rails of the Union Pacific

Railroad; thence along said line North $47^{\circ}38'31''$ West, 1554.54 feet to a curve to the right having a radius of 2742.42 feet; thence northwesterly along said curve 1358.55 feet through a central angle

$28^{\circ}23'00''$; thence continuing along said line 100.00 feet easterly from the center of the rails, North $19^{\circ}15'31''$ West, 4.28 feet to a curve to the left having a radius of 2964.79 feet; thence northwesterly

along said curve 228.51 feet through a central angle of $4^{\circ}24'58''$; thence North $23^{\circ}38'31''$ West,

202.17 feet to a curve to the left having a radius of 2964.79 feet; thence northwesterly along said

curve 300.12 feet through a central angle of $5^{\circ}48'00''$; thence North $29^{\circ}26'31''$ West, 506.10 feet to

curve to the right having a radius of 1332.39 feet; thence northwesterly along said curve 370.52 feet

through a central angle of $15^{\circ}56'00''$; thence

North $13^{\circ}30'31''$ West, 1644.80 feet to a curve to the left having a radius of 1054.93 feet; thence

northwesterly along said curve 196.24 feet through a central angle of $10^{\circ}39'29''$ to the south line of

the southeast quarter of Section 24, Township 4 South, Range 1 West, Salt Lake Base and Meridian

thence along said south line South $89^{\circ}45'48''$ East, 953.25 feet to a point on said line thence North

$89^{\circ}45'08''$ West, 1326.04 feet from the southeast corner of said Section 24; thence North

$00^{\circ}05'33''$ West, 5074.46 feet; thence

North $84^{\circ}44'27''$ East, 893.84 feet along the Salt Lake and Utah County line as historically describe

thence North $52^{\circ}04'27''$ East, 189.56 feet along said County line to the south line of the southeast

quarter of Section 13; Township 4 South, Range 1 West, Salt Lake Base and Meridian; thence North

$89^{\circ}43'41''$ East, 315.65 feet along said line to the southeast corner of said section; thence North

$00^{\circ}38'43''$ East, 246.63 feet along the east line of said section; thence along said County line the

following four courses:

North $52^{\circ}04'27''$ East 7.76 feet; North $36^{\circ}45'27''$ East, 2161.50 feet; North $58^{\circ}40'27''$ East, 1109.46

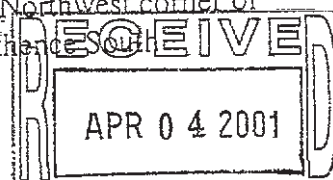
feet; and North $33^{\circ}59'27''$ East, 113.06 feet to the east-west centerline of Section 18, Township 4

South, Range 1 East, Salt Lake Base and Meridian; thence

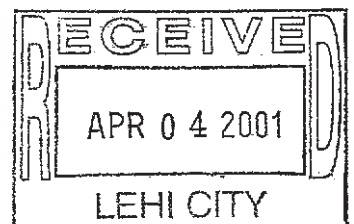
North $89^{\circ}36'48''$ East, 2940.15 feet to the east quarter corner of said section; thence

South $00^{\circ}28'29''$ West, 2632.27 feet along the east line of said section to the Northwest corner of

Section 20, Township 4 South, Range 1 East Salt Lake Base and Meridian; thence South



89°46'13"East, 3492.87 feet along the north line of said section 20; thence South 31°13'40"West, 1601.81 feet; thence South 13°06'50"West, 1532.30 feet; thence South 32°46'00"West, 816.58 feet; thence South 35°30'07"West, 490.30 feet; thence South 00°31'51"West, 836.45 feet; thence South 09°15'00"East, 545.34 feet to the northwest corner of Travis Ranch as described in Book 4205, Page 240, Official Records of Utah County, Utah; thence along the westerly line of said Travis Ranch the following four courses: South 01°54'25" West, 197.90 feet; South 31°59'51" East, 374.88 feet; South 33°29'51" East, 520.08 feet; and South 24°12'47" East, 454.17 feet to the northwest corner of the property of U. S. General as described in Book 3726, Page 439, Official Records of Utah County, Utah; thence South 00°04'40"East, 2663.69 feet along the west line of said U. S. General property to the northwest corner of the property of Micron as described in Book 3905, Page 444, Official Records of Utah County, Utah; thence South 00°03'21"East, 2187.62 feet along the west line of said Micron property to the point of beginning.



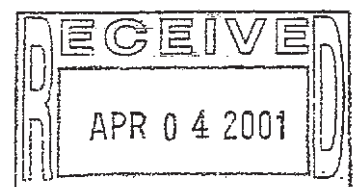
PARCEL 1 B:

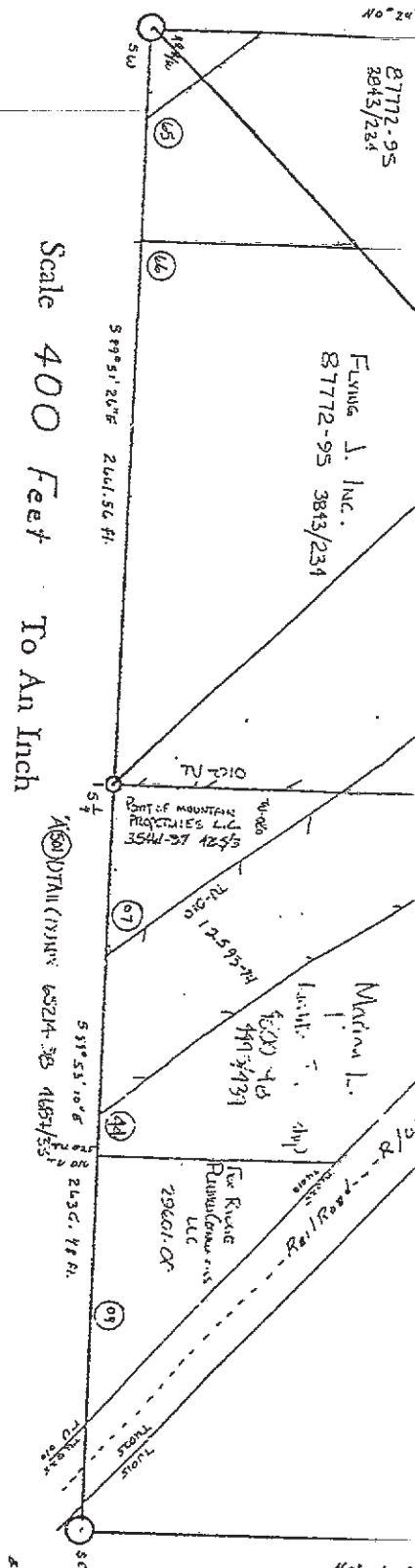
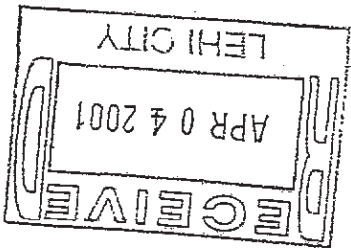
Beginning at a point South $56^{\circ}54'46''$ East 1573.67 feet to a highway right - of - way monument and South $0^{\circ}09'01''$ West 100.06 feet from the Southeast Corner of Section 30, Township 4 South, Range 1 East, Salt Lake Base and Meridian; and running thence South $0^{\circ}09'01''$ West 358.47 feet; thence South $89^{\circ}57'45''$ 1320.95 feet; thence North $89^{\circ}49'47''$ West 4114.58 feet to the South line of highway; thence along said highway North $87^{\circ}36'38''$ East 1777.66 feet to a right - of - way monument, thence Easterly along the arc of a 5746.95 foot radius curve to the left 791.058 feet (chord bears North $83^{\circ}40'02''$ East 790.43 feet); thence North $79^{\circ}43'26''$ East 752.15 feet; thence Easterly along the arc of a 5741.38 foot radius curve to the right 1244.837 feet (chord bears North $85^{\circ}56'07''$ East 1242.40 feet); thence South $87^{\circ}40'10''$ East 896.11 feet to the point of beginning.

LESS AND EXCEPTING any portion found lying within the bounds of the Union Pacific Railroad right - of - way.

ALSO LESS AND EXCEPTING any portion found lying within that certain right - of - way commonly known as 11000 North Street.

ALSO LESS AND EXCEPTING that portion deeded to the United States of America and Provo Reservoir Company by the following documents: Warranty Deed recorded June 7, 1939, as Entry No. 5657, in Book 348, at Page 245 of Official Records, and Warranty Deed recorded July 23, 1947, as Entry No. 8697, in Book 481, at Page 545 of Official Records.





Scale 400 Feet To An Inch

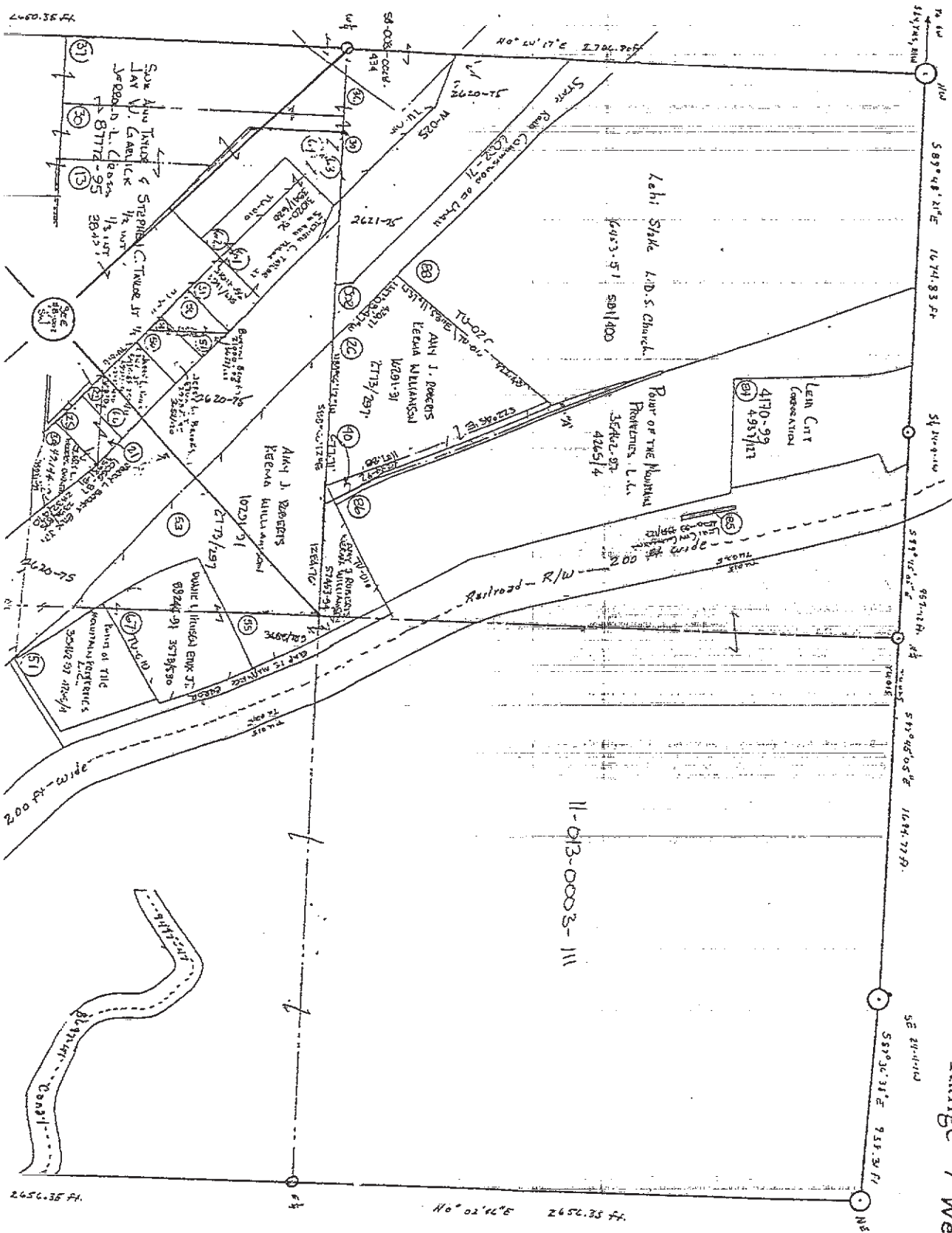
By Thompson for Atlas Realty INC

UTAH COUNTY PLATS

Section 25 Township 4 South

Range 1 West

58-002
0086
0001
00 UNITS



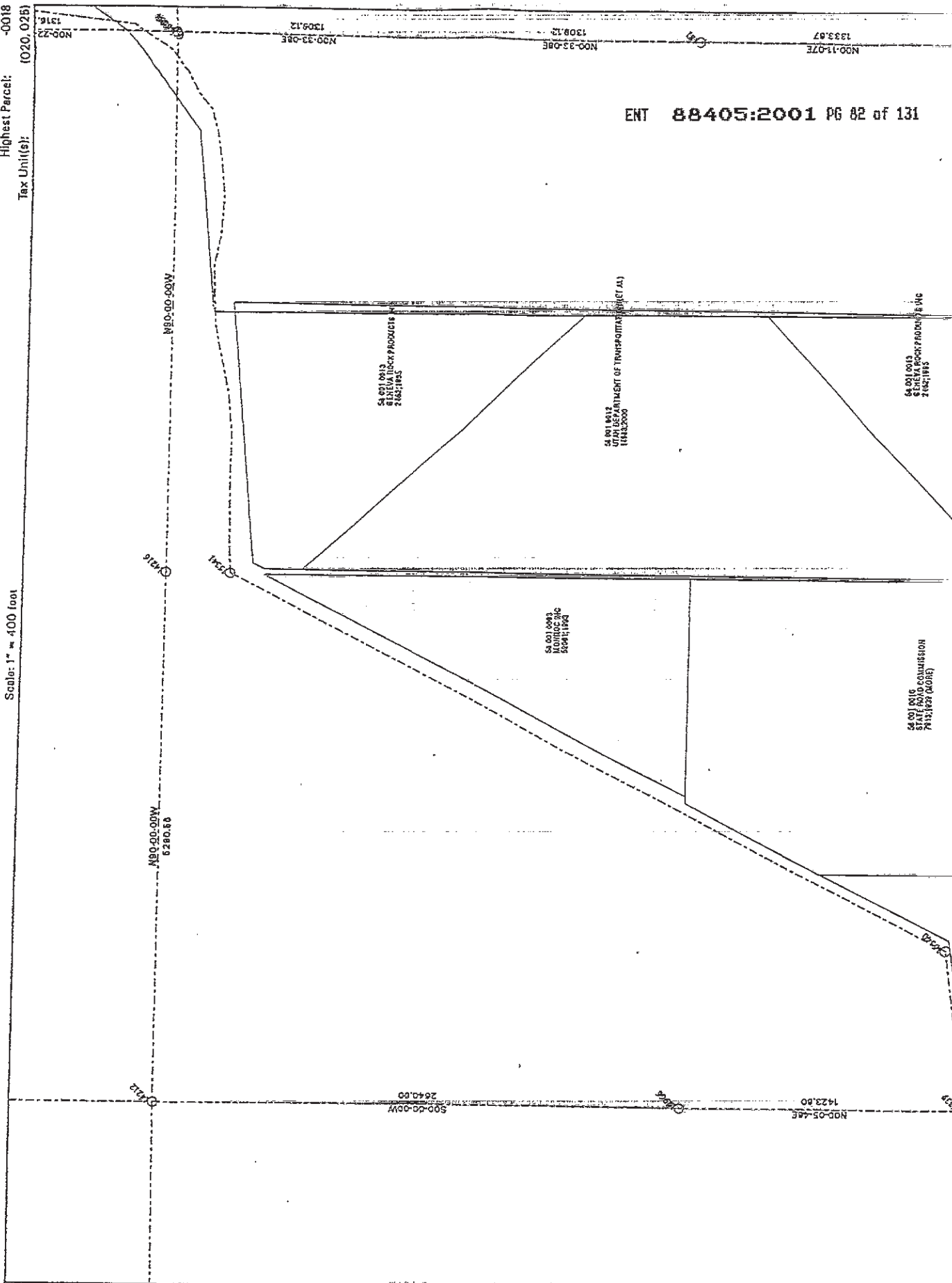
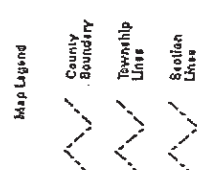
Ownership Map

All of Sec 24, T4S, R1W

Map Filing Book-Page: 58-001
Sheet: 1 of 1
Highest Parcel: -0018
Tax Unit(s): (020, 02B)

Scale: 1" = 400 feet

By: Todd
Date: January 28, 2001



34

UTAH COUNTY PLATS 11-034-Parcel

tax unit-025

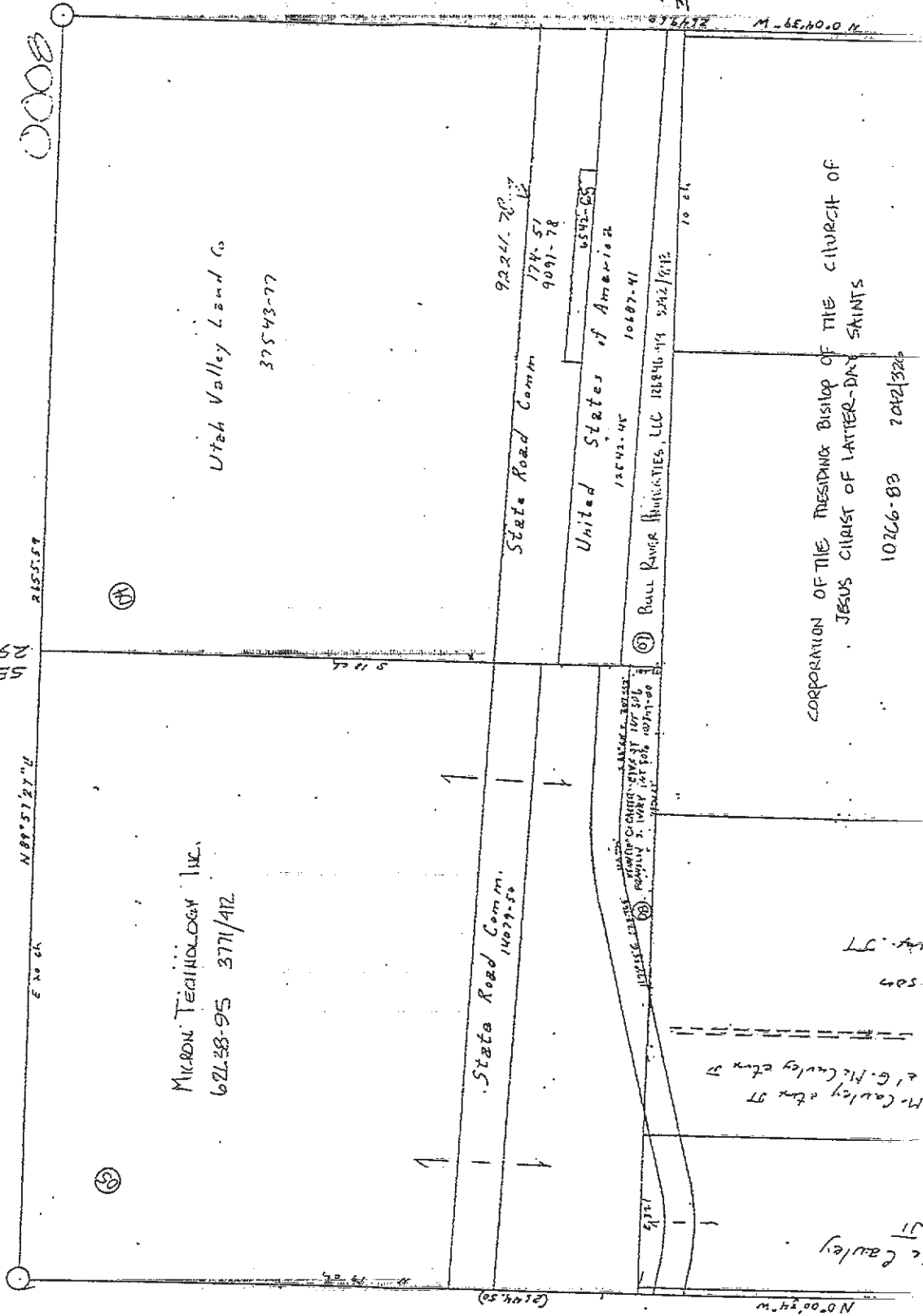
Range 1 East

NE Section 32

Township 4 South

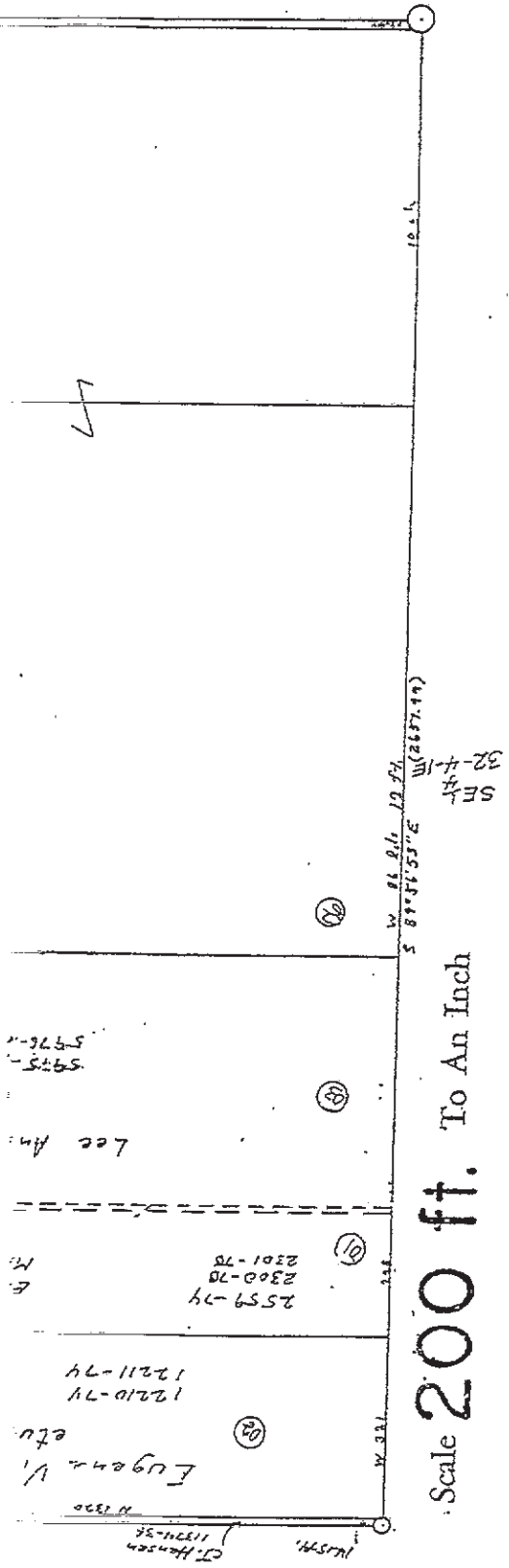
5B #

29-4-1E



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ENT 88405:2001 PG 85 of 131



- City Boundary Line
- Property Line
- Subdivision Boundary
- Township Line
- Section Line
- Quarter Section Line

Incorporated City

Section Monument

Utah County Plat

By: TODD

Date: November 07, 1997

All of Sec 29, T4S, R1E

Scale: 1" = 400 feet

Map Filing Book-Page: 11-0

Sheet: 1

Highest Parcel: 0

Tax: UH018320.0102

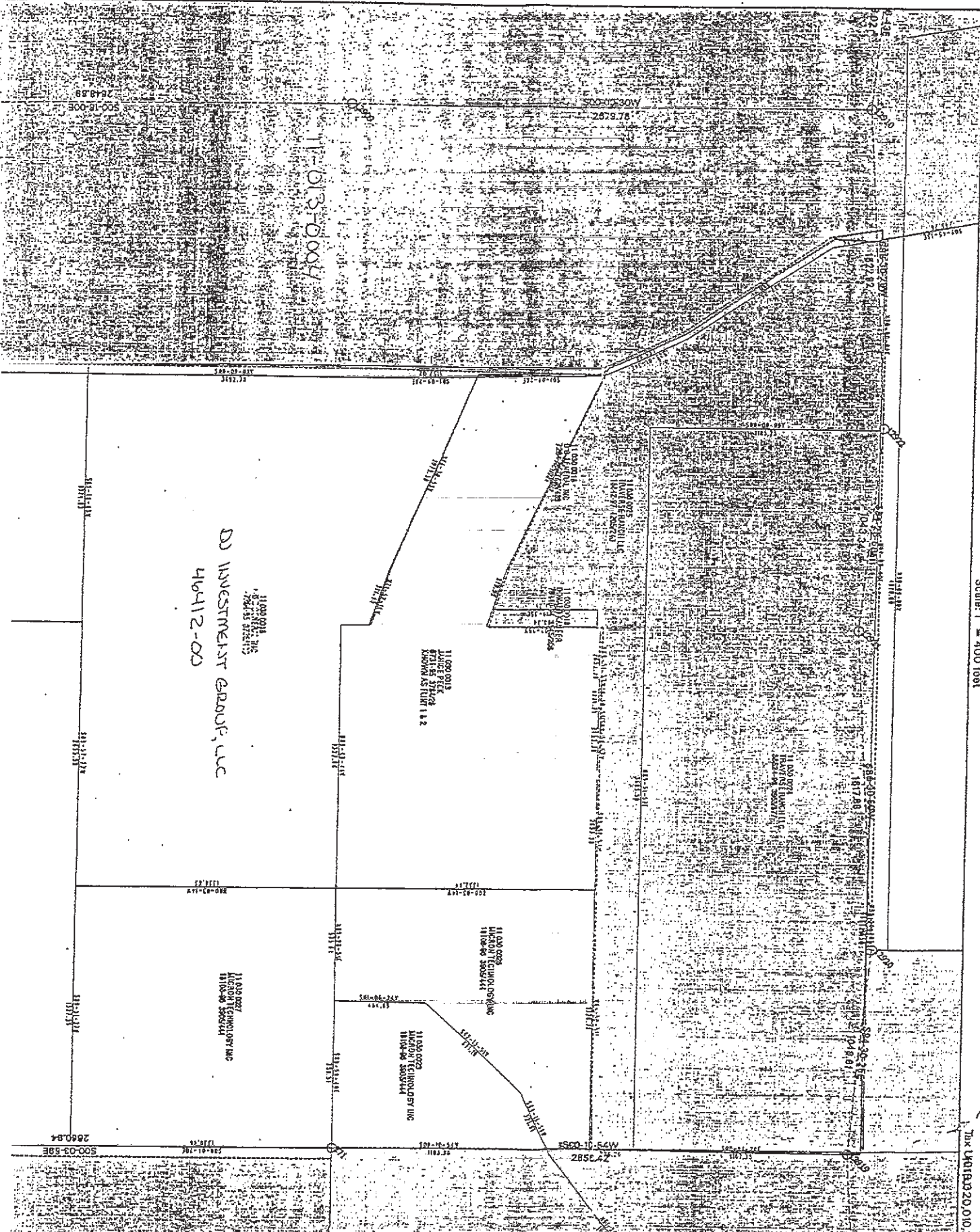


EXHIBIT B

**ARTICLES OF INCORPORATION
OF THE MASTER ASSOCIATION**

**ARTICLES OF INCORPORATION
OF
TRAVERSE MOUNTAIN MASTER ASSOCIATION
A Utah Non-Profit Corporation**

I

The name of this corporation ("**Corporation**" herein) is TRAVERSE MOUNTAIN MASTER ASSOCIATION.

II

- A. The Corporation is organized as a non-profit corporation and is not organized for the private gain of any person. It is organized under the Utah Revised Nonprofit Corporation Act (the "Act") for public purposes.
- B. The purposes of the Corporation are to (i) promote the common good and general welfare of the Traverse Mountain community, (ii) manage the master planned community and planned unit development known as Traverse Mountain, and (iii) engage in any lawful act for which a non-profit corporation may be organized under the Act.

III

- A. The Corporation is organized and operated exclusively as a non-profit corporation within the meaning of the Act and shall have and exercise any and all powers, rights and privileges which a corporation organized under the Act may now or hereafter have or exercise, provided that the Corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the specific purposes of the Corporation listed in Article II.B above. The Corporation's exercise of its powers is limited by its Bylaws and the Declaration of Development Covenants, Conditions and Restrictions for Traverse Mountain recorded in Official Records of Utah County, Utah.
- B. No part of the activities of this Corporation shall consist of lobbying or propaganda, or otherwise attempting to influence federal, state or local legislation of any type. This Corporation shall not participate in or intervene in any political campaign (including publishing or distributing statements) on behalf of or in opposition to any candidate for political office or any proposed legislation.

IV

- A. The Corporation will have voting members. The classes of Membership and the voting and other rights and privileges of Members are forth in the Bylaws. The Corporation will not issue shares of stock.

- B. Amendment of these Articles of Incorporation shall require the assent (by vote or written consent) of (i) a majority of the Board of Directors of the Corporation, and (ii) a majority of the Neighborhood Representatives representing the total voting power of each class of voting membership in existence when the amendment is proposed.

V

A. The Corporation's principal office is located at: _____

B. The names and street addresses of the three (3) persons who will act as the initial Board of Directors are:

C. The name and street address of the Incorporator is:

D. The name of the Corporation's initial Registered Agent and the street address of the Corporation's Initial Registered Office are:

Registered Agent: _____

Registered Office Address: _____

VI

- A. The assets of the Corporation are irrevocably dedicated to social welfare purposes and no part of the profits shall ever inure to the benefit of a director, officer, or any private shareholder, member or individual.

- B. On a dissolution or a winding up of the Corporation, its assets remaining after payment of, or provision for the payment of, all debts and liabilities of the Corporation shall be distributed to a non-profit organization that is organized and operated exclusively for social welfare purposes and that has established its tax exempt status under Section 501(c)(3) or Section 501(c)(4) of the Internal Revenue Code.

VII

- A. The term of this Corporation's existence is perpetual.

VIII

- A. To the fullest extent authorized by law, the Corporation has the power and duty to indemnify Board members, Corporation officers and Corporation committee members for all damages, pay all expenses incurred, and satisfy any judgment or fine levied as a result of any action or threatened action brought because of performance of an act or omission within what such person reasonably believed to be the scope of the person's Corporation duties ("Official Act"). Board members, Corporation officers and Corporation committee members are deemed to be agents of the Corporation when they are performing Official Acts for purposes of obtaining indemnification from the Corporation pursuant to this Article. The entitlement to indemnification inures to the benefit of the estate, executor, administrator and heirs of any person entitled to such indemnification.
- B. To the fullest extent authorized by law, the Corporation has the power, but not the duty, to indemnify any other person acting as an agent of the Corporation for damages incurred, pay expenses incurred, and satisfy any judgment or fine levied as a result of any action or threatened action because of an Official Act.
- C. The Corporation also has the power, but not the duty, to contract with any Person to provide indemnification in addition to any indemnification authorized by law on such terms and subject to such conditions as the Corporation may impose.

The undersigned, who is the incorporator of the Corporation, has executed these Articles of Incorporation on _____, 2001.

Print Name:
Title: Incorporator

Acceptance of Appointment by Registered Agent

Pursuant to the Act, the undersigned hereby accepts appointment as registered agent for
TRAVERSE MOUNTAIN MASTER ASSOCIATION.

Dated _____, 2001.

EXHIBIT C

BYLAWS OF THE MASTER ASSOCIATION

BYLAWS
OF
TRAVERSE MOUNTAIN MAINTENANCE CORPORATION

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FOR BYLAWS OF

TRAVERSE MOUNTAIN MAINTENANCE CORPORATION

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OF

TRAVERSE MOUNTAIN MAINTENANCE CORPORATION

ARTICLE I
GENERAL PLAN

The Traverse Mountain Master Association is the homeowners association formed to manage and maintain the Master Association Property, enforce the Governing Documents and impose architectural control in the Properties. Each homeowner in the Properties will become a Member of the Master Association. The Board of Directors of the Master Association oversees its operations. Day to day activities are performed by the Community Manager and supervised by the Master Association Board. Specific day-to-day responsibilities are assigned to the Master Association officers.

To encourage the community to be involved in the operation of the Master Association, the Declarant has divided the Properties into Neighborhoods and assigned each Neighborhood a Neighborhood Representative. The Neighborhood Representative will be responsible for keeping Neighborhood residents informed of Master Association activities, voting on certain issues and performing other duties described in Article IV.

For significant matters, decisions can only be made by a vote of the Members. Rules regarding Members decisions are in Article V.

Responsibility for design review is delegated to the Aesthetics Review Committee. The Aesthetics Review Committee is responsible for updating the Design Guidelines and reviewing plans for proposed architectural and landscaping modifications. Rules regarding operation of the Aesthetics Review Committee are in the Master Declaration.

The Board also has the power to appoint a Nominating Committee. The Nominating Committee can assist the Board in its search for volunteers to serve as Board members or Neighborhood Representatives. The Nominating Committee is described in Section 2.14.2 of these Bylaws. The Board and president both have the power to appoint other committees to assist in various aspects of operation of the Master Association.

Below is a chart showing the relationship of these different parties.

**BOARD OF DIRECTORS
Oversees All Operations**

| <i>Officers</i> | <i>Committees</i> | <i>Neighborhood Representatives</i> | <i>Members</i> |
|---|---|---|--|
| President Vice President Secretary Chief Financial Officer ■ <i>Assigned broad duties</i> | Aesthetics Review Committee Nominating Committee ■ <i>Have jurisdiction over specific matters</i> | ■ <i>Responsible for communications with Members and voting on certain issues</i> | ■ <i>Receive benefits of Membership</i> ■ <i>Encouraged to participate and responsible for complying with the Governing Documents</i> ■ <i>Vote on select issues</i> |

These Bylaws establish the procedures to be followed by the Master Association Board, the Community Manager, the Master Association officers, committees, Neighborhood Representatives and Members as they operate the Master Association.

1.1. NAME.

The name of the corporation is the **Traverse Mountain Master Association**. The principal office of the Master Association shall be located in Lehi City, Utah.

1.2. DEFINITIONS AND INTERPRETATION.

Unless otherwise provided in these Bylaws, the capitalized terms in these Bylaws have the same meanings as are given to such terms in the Master Declaration. These Bylaws shall be interpreted in accordance with Section ___ of the Master Declaration [Mark, I cannot find a section that would be applicable here]. All references in the Bylaws to the "Act" are to the Utah Revised Nonprofit Corporation Act.

1.3. MASTER ASSOCIATION RESPONSIBILITIES.

In accordance with the Master Declaration, the Master Association is responsible for the following:

- ✓ Administering the Properties,
- ✓ Maintaining the Master Association Property,

- ✓ Approving the Budget,
- ✓ Establishing and collecting all assessments authorized under the Master Declaration,
- ✓ Providing overall architectural and landscaping control in the Properties, and
- ✓ Enforcing the Governing Documents.

1.4. APPLICATION.

These Bylaws are applicable to the phased master planned community known as Traverse Mountain, located in Lehi City, Utah. All Persons occupying a Residence in the Properties or using the facilities of the Properties in any manner are subject to the Governing Documents. By acquiring, renting or occupying any Residence in the Properties the Person doing so signifies that the Person agrees to comply with the Governing Documents.

Generally, the Board of Directors is responsible for overseeing the operations of the Master Association and making most of the decisions regarding Master Association operations. However, in some situations, Master Association decisions can only be made by the Members or the Neighborhood Representatives. Each of the following articles describes these various responsibilities. Article II describes how the Board of Directors operates. Article III describes the duties and responsibilities of the Master Association officers. Article IV describes how the Neighborhood Representatives make decisions. Article V describes the process used to obtain Member decisions on issues.

1.5. **LIMITS.** [Mark, I do not see why all of this IRS stuff is necessary. Contributions are not tax deductible. I have never seen these in a community association before. I recommend deleting them. It is a member association.]

The Master Association is organized and shall be operated in accordance with the Articles, these Bylaws and the Master Declaration.

1.5.1. Organization and Activity.

The Master Association is organized exclusively for purposes within the meaning of Section 501(c)(4) of the IRC. The Master Association shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the purposes of the Master Association. The Master Association shall not carry on any other activities not permitted to be carried on by a corporation exempt from federal income tax under Section 501(c)(4) of the IRC or the corresponding provision of any future United States internal revenue law.

1.5.2. Political Activities.

The Master Association shall not participate in or intervene in (including publishing or distributing statements) any political campaign on behalf of or in opposition to any candidate for political office or any proposed legislation.

1.5.3. Assets and Property.

The property, assets, profits, and net income of the Master Association are irrevocably dedicated to social welfare purposes. No part of the earnings of the Master Association shall ever inure to the benefit of any director, trustee, officer, shareholder or member of the Master Association or to the benefit of any private individual.

1.5.4. **Not for Profit.**

The Master Association is not organized, and shall not be operated, for pecuniary gain or profit.

1.5.5. **Dissolution.**

On the winding up and dissolution of the Master Association, after paying or adequately providing for its debts and obligations, the Master Association's remaining assets shall be distributed to such organizations organized and operated exclusively for social welfare purposes which have established tax-exempt status under Section 501(c)(4) of the IRC or the corresponding provisions of any future United States internal revenue law.

1.6. **MEMBERSHIP.**

1.6.1. **Classes of Membership.**

The Master Association classes of voting Membership are as follows:

Class A. Class A members are all Owners except Declarant for so long as a Class B Membership exists. Class A members are entitled to one (1) vote for each Assessment Unit assigned to each Lot or Condominium owned and subject to Assessment.

Class B. The Class B member is Declarant. The Class B member is entitled to _____ votes regardless of the number of Lots and Condominiums that Declarant owns. The Class B Membership shall terminate when neither Declarant nor any Neighborhood Builder owns any portion of the Properties and the Annexable Territory.

1.6.2. **Voting of Classes.**

As long as there is a Class B membership, any provision of the Bylaws which expressly requires the vote or written consent of the Master Association's voting power before action may be undertaken (whether exercised by the Neighborhood Representatives or the Members) shall require the approval of the voting power of each class of Membership. On termination of the Class B membership, any provision of the Bylaws which requires the vote or written consent of the Master Association's voting power before action may be undertaken (whether exercised by the Neighborhood Representatives or the Members) shall then require the vote or written consent of the Association's total voting power.

**ARTICLE II
BOARD OF DIRECTORS**

This Article describes the Board of Directors including the number of people who will serve on the Board, their term of office and how they are elected. This Article also establishes the powers and duties of the Board and limits on the Board's powers.

Start Up of the Master Association.

After the Master Association is incorporated, it will be governed by a Board of Directors composed of three persons appointed by the incorporator. Within one year after the first Close of Escrow in the Properties, an election of Directors will be held. At this first election, the Board of Directors will automatically expand to five positions. All of these positions will be available to be filled in the election. The persons originally appointed as Directors by the incorporator may be re-elected to the Board or new persons may be elected. The Declarant will have the right to appoint a majority of the Directors until the Declarant and the Neighborhood Builders no longer own any part of the Properties or the Annexable Territory. The remaining Directors will be elected by the Members.

Long Term Operations.

Directors' terms of office are staggered. At the first election, the three persons receiving the highest number of votes will be elected to serve for three-year terms. The two persons receiving the next highest number of votes will be elected to serve for two-year terms. (However, if Declarant appoints the majority of the Directors, then the remaining Directors elected by the Members will all serve three year terms.) At subsequent elections, new Directors will be elected to replace Directors whose terms are ending. These new Directors will serve two-year terms. The expected result of this system is that, after Declarant's right to appoint Directors expires, either two or three positions on the Board are open to be filled at each election.

2.1. NUMBER.

Until the first election of Directors, the Master Association's property, business and affairs shall be governed and managed by a Board of Directors composed of three (3) persons. Beginning with the first election of Directors, the property, business and affairs of the Master Association shall be governed and managed by a Board of Directors composed of five (5) persons. The authorized number of Directors may be changed by a duly adopted amendment to the Bylaws.

2.2. QUALIFICATIONS.

2.2.1. Qualifications for Nomination.

Anyone nominated to serve as a Director must be a natural person at least 18 years old who is one of the following:

- (a) An Owner of a Lot or Condominium in the Residential Area who is not an officer or director of a Neighborhood Corporation, or
- (b) An Owner or agent of an Owner of a Lot in any area of the Properties that is not a part of the Residential Area, or
- (c) An agent of Declarant or an agent of a Neighborhood Builder.

2.2.2. Qualifications for Holding Office.

Directors must satisfy the following requirements while they serve in office:

- Board;
- (a) Not be absent from three (3) consecutive meetings of the Board;
 - (b) Attend at least seventy-five percent (75%) of the Board meetings held each year and attend the entire meeting each time;
 - (c) Be a Member in good standing or agent of a Member in good standing.

Any Director who fails to satisfy these requirements is deemed to have resigned effective upon the date of a resolution adopted by the Board confirming that the Director did not satisfy all of the requirements of this Section 2.2.

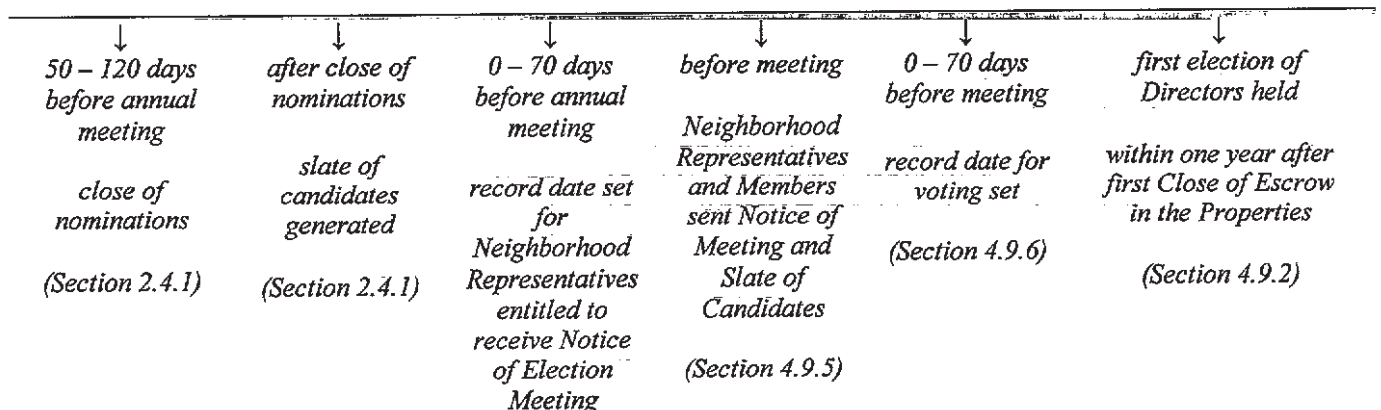
2.3. TERM OF OFFICE.

Each Director shall hold office until his successor has been elected or until his removal. The term of office of the three (3) Directors receiving the highest number of votes at the first election shall be three (3) years and the term of office of the two (2) Directors receiving the next highest number of votes at the first election shall be two (2) years. Thereafter, new Directors shall be elected or appointed to fill any vacancies. The term of office of each Director elected to fill a vacancy created by the expiration of the term of office of the respective past Director shall be two (2) years. The term of office of each Director elected or appointed to fill a vacancy created for any other reason shall be the balance of the unserved term of the Director's predecessor. Any Director may be reelected. There is no limit on the number of terms which a Director may serve.

2.4. ELECTIONS.

Directors will be elected by the Neighborhood Representatives at their annual meeting. Prior to the annual meeting, the Nominating Committee will solicit nominations of candidates for the Board positions and generate a Slate of Candidates. The Slate of Candidates will be distributed to the Neighborhood Representatives and to the Members (for information purposes only). Cumulative voting will be used in all elections.

The following is a time line showing the days for performing various tasks to be completed in connection with the first election of Directors.



*(Section 4.9.6)***2.4.1. Nomination Procedure.**

The Nominating Committee, acting at the Board's direction, will seek volunteers to run for office. The Board may establish nomination procedures and reasonable time frames for receiving nominations in the Community Guidelines. The date set for close of nominations must be not less than fifty (50) nor more than one hundred twenty (120) days before the date of the Directors election (the "Election Meeting"). No nominations for the Board can be made after the date set for the close of nominations. A slate of candidates ("Slate of Candidates") must be prepared and distributed to the Neighborhood Representatives and Members based on the nominations that comply with the nomination guidelines established by the Board.

2.4.2. Cumulative Voting.

Cumulative voting must be used in the election of Directors for any election in which two (2) or more Directors are to be elected. To cumulate votes, Members may cast a number of votes equal to the Member's share of the voting power multiplied by the number of Directors to be elected. When cumulative voting is used, the procedures established in Section 16-6a-717 of the Act shall be followed.

2.4.3. Appointed Directors.

So long as Declarant or a Neighborhood Builder owns any portion of the Properties or the Annexable Territory, Declarant is entitled to appoint a majority of the members of the Board of Directors.

2.5. VACANCIES.

Until Declarant's right to appoint a majority of the Directors terminates, a vacancy in the office of a Director who was appointed by the Declarant shall be filled only by an appointee of the Declarant. Any vacancies on the Board caused by any other reason may be filled by either a vote of the Neighborhood Representatives or a vote of a majority of the remaining Directors, even though they may constitute less than a quorum. A Director may resign at any time by giving written notice to the Master Association through its President, the Secretary or the Board. Any such resignation is effective on the date of receipt of such notice or at any later time specified in the resignation notice. Unless specified in the notice, acceptance of the resignation by the Board is not necessary to make it effective. If a Director's resignation is effective at a later time, the Board may elect a successor to take office as of the date when the resignation becomes effective. A vacancy or vacancies on the Board shall exist on the occurrence of the following: (a) the death or resignation of any Director; (b) the declaration by resolution of the Board of a vacancy in the office of a Director who has failed to fulfill the requirements of Section 2.2.2; (c) the increase of the authorized number of Directors; (d) the failure of the Neighborhood Representatives to elect the number of Directors required to be elected at such meeting; (e) a Director is removed in a judicial proceeding, or (f) the occurrence of any other events resulting in a vacancy as provided under the Act. Any vacancy not filled by the Directors may be filled by the Neighborhood Representatives.

2.6. REMOVAL OF DIRECTORS.

Without limiting the scope of the Board's general powers and duties, the Board is also granted the following powers and duties:

2.8.1. **Officers, Agents and Employees.**

The power and duty to select, appoint and remove all Master Association officers, agents and employees, to prescribe such powers and duties for them as may be consistent with law and with the Governing Documents, to fix their compensation, to require from them security for faithful service when the Board deems advisable, and to contract to provide them with such indemnification from the Master Association as the Board determines is appropriate.

2.8.2. **Neighborhood Representatives.**

The power granted in Section 4.4.2 to appoint Neighborhood Representative or alternates when Members fail to elect them along with the power granted in Section 4.4.2 to remove Neighborhood Representatives or alternates who fail to perform their duties.

2.8.3. **Contracts.**

The power to enter into contracts. This includes the power and duty to contract and pay for maintenance, landscaping, utilities, materials, supplies and services relating to the Master Association Property, to retain Persons necessary to operate the Properties, including legal and accounting services, to contract and pay for maintenance and installation of Improvements on the Master Association Property, and to contract to provide services to areas outside of the Properties when the Board determines that the Master Association will be appropriately compensated and providing the services will not unreasonably burden the Master Association. The contracts the Board is authorized to enter into on behalf of the Master Association include agreements for Telecommunications Services, agreements with any nonprofit corporations or Local Governmental Agencies and agreements with the Declarant, Neighborhood Builders, and the Owners regarding funding, maintenance or operation of the Properties.

2.8.4. **Principal Office, Place of Meetings, Seal.**

The power but not the duty to change the Master Association's principal office from one location to another within Lehi City; to designate any place within Lehi City for meetings of Members or Neighborhood Representatives; to adopt and use a corporate seal and to alter the form of such seal.

2.8.5. **Assessments.**

The power and duty to fix, levy and collect Assessments, as provided in the Master Declaration. Subject to any limits imposed by the Governing Documents, the Board may incur expenditures for any permitted purpose and accumulate reserves. The funds collected by the Board from the Members for reserves, maintenance recurring less frequently than annually, and capital improvements, is at all times held in trust for the Members. Disbursements from reserve funds may only be made in accordance with the Master Declaration.

2.8.6. **Enforcement.**

The power to enforce the Governing Documents and any agreements entered into by the Master Association and to impose sanctions against members for violations of the Governing Documents.

2.8.7. **Insurance.**

The power and duty to contract and pay for insurance in accordance with the Master Declaration.

2.8.8. **Delegation.**

The power but not the duty to delegate its powers according to law.

2.8.9. **Governing Documents.**

The power to adopt these Bylaws and amend these Bylaws as authorized and limited in Section 6.1 along with the power to adopt, amend or restate such other Governing Documents as authorized in the Governing Document.

2.8.10. **Conveyances.**

The power but not the duty to grant or quitclaim exclusive or nonexclusive easements, licenses or rights of way in, on, or over the Master Association Property for purposes consistent with the intended use of the Properties as a master planned community.

2.8.11. **Records.**

The power and duty to keep, or cause to be kept, a complete record of Master Association acts and corporate affairs.

2.8.12. **Sale of Property.**

The power but not the duty to sell property of the Master Association; provided, however, that Neighborhood Representatives must approve any sale during any Fiscal Year of Master Association Property having an aggregate fair market value greater than five percent (5%) of the Master Association's budgeted gross expenses for that Fiscal Year.

2.8.13. **Community Manager.**

The power to engage a Community Manager for the Master Association at a compensation established by the Board to fulfill such duties and provide such services as the Board authorizes.

2.9. **BOOKS, AUDIT.**

The Board shall distribute to all Members (and any Beneficiary, insurer and guarantor of a first Mortgage upon request) the financial and other information required by Act Sections 16-6a-1601 *et. seq.* When appropriate, financial information for each Special Benefit Area and the General Assessment Component of Common Assessments shall be prepared separately.

2.10. **COMPENSATION.**

Directors may not receive any salary or compensation for their services as Directors unless such compensation is approved by the Neighborhood Representatives; provided, however, that (i) nothing in these Bylaws precludes any Director from serving the Master Association in some other capacity and receiving compensation therefor, and (ii) any Director may be reimbursed for actual expenses incurred in performance of Master Association duties.

2.11. **MEETINGS.**

2.11.1. **Attendance.**

Any meeting of the Board may be held by conference telephone or through use of any other communication equipment, so long as the requirements for attendance at a meeting through the selected method established by the Act are met. In these cases, all Directors will be deemed to be present in person at the meeting. All meetings of the Board except executive sessions must be open to all Members and Neighborhood Representatives to the extent of space available. Directors may not act by proxy.

2.11.2. **Organization Meeting of Board.**

The first regular meeting of a newly elected Board ("Organization Meeting") must be held within thirty (30) days of election of the Board, at such place as is fixed and announced by the Directors when such Directors were elected. At the Organization Meeting, the Directors shall organize, elect officers and transact other business.

2.11.3. **Regular Meetings of Board.**

Regular meetings may be held at such time and place within the Properties as is determined by a resolution adopted by the Board; provided, however, that such meetings must be held no less frequently than quarterly. Regular meetings of the Board may be held without notice to the Board if the time and place of such meetings are fixed by the Board. Otherwise, notice of regular meetings must be given in the manner required for special meetings of the Board by Section 2.11.4.

2.11.4. **Special Meetings of Board.**

Special meetings may be called by the President or by any two (2) Directors upon not less than two (2) days' notice to Board members delivered personally or by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, facsimile, electronic mail, or other electronic means. The notice must state the date, time and place of the meeting.

2.11.5. **Executive Sessions.**

The Board may convene in executive session to discuss and vote upon personnel matters, litigation, matters relating to the formation of contracts with third parties, Member discipline or any other matters the Board determines should be kept confidential. The general nature of any business to be considered in executive session must be announced in an open session held before or after the executive session and must be generally noted in the minutes of a Board meeting. In any matter relating to the discipline of a Member, the Board shall meet in executive session if requested by that Member. The Member may attend the executive session.

2.11.6. **Waiver of Notice.**

Before or at any meeting of the Board, any Director may, in writing, waive personal notice of such meeting and such waiver is equivalent to giving notice to such Director. Attendance by a Director at any Board meeting waives personal notice of the time and place of the meeting unless the Director complies with the requirements of Act Section 16-6a-815 for objecting to the meeting. The transactions of any Board meeting, however called and noticed or wherever held, are valid as if they occurred at a meeting duly held after regular call and notice, if a quorum is present and either before or after the meeting, each of the Directors not present signs a written

waiver of notice. The Secretary shall file all waivers with the Master Association's records or make them a part of the minutes of the meeting.

2.12. ACTION WITHOUT MEETING.

The Board may act without a meeting if the requirements of Act Section 16-6a-813 are met. Written consents must be filed with the minutes of the proceedings of the Board. Within thirty (30) days after the written consents of all Directors have been obtained, an explanation of any action taken by written consent without a meeting must be communicated to the Members by any means the Board determines is appropriate.

2.13. QUORUM AND ADJOURNMENT.

Except as otherwise expressly provided in these Bylaws, at all meetings of the Board, a majority of the Directors constitutes a quorum for the transaction of business, and the acts of a majority of the Directors present at a meeting at which a quorum is present are the acts of the Board. If at any meeting of the Board there is less than a quorum present, the majority of those present may adjourn the meeting to another time.

2.14. COMMITTEES.

2.14.1. Generally.

The Board may, by resolution, designate such advisory and other committees as it desires, and may establish the purposes and powers of each such committee. The resolution designating and establishing the committee must (a) provide for appointment of its members and a chairman, (b) state the purposes of the committee, and (c) provide for reports, termination and other administrative matters the Board deems appropriate. All committees are required to keep minutes of their meetings. Committee meeting minutes shall be maintained at the Master Association's principal office or at such other place as the Board may designate. Committee meetings must be open to Members and Neighborhood Representatives to the extent of space available unless the Board authorizes the Committee to meet in executive sessions.

2.14.2. Nominating Committee.

The Board may form a Nominating Committee to solicit volunteers to serve as Neighborhood Representatives and alternates, serve as Board members or fill other Master Association positions. At the Board's direction, the Nominating Committee will also be responsible for assisting candidates for Master Association offices in becoming familiar with their potential duties and responsibilities. The Nominating Committee may, at the Board's request, assist in preparing and distributing election materials. Any member of the Board, any Owner in the Properties and agents of Owners of Lots outside of the Residential Area may serve on the Nominating Committee. If a Nominating Committee is not formed, the Board shall perform the duties of the Nominating Committee.

2.14.3. Special Benefit Area Committee.

The Board may delegate certain duties involving managing any Special Benefit Area to a committee composed of the Neighborhood Representatives for and Members of the Neighborhoods within the Special Benefit Area. The Board may make the committee responsible for oversight of all aspects of operation of the Special Benefit Area including preparing all financial information and contracting for services for the Special Benefit Area. The

Board, at its option, may assign a representative of the Community Manager to act as the Special Benefit Area manager and assist the committee in performing its duties. The scope of the powers of the committee, procedures for operation and any other rules needed to operate the committee may be established by the Board in the Community Guidelines.

ARTICLE III OFFICERS

This Article describes the responsibilities of the different officers of the Master Association. Officers of the Master Association are elected annually by the Board of Directors and serve at the pleasure of the Board.

3.1. DESIGNATION.

The Master Association's principal officers are a President, a Vice President, a Secretary, and a Chief Financial Officer, all elected by the Board. The Board may appoint an Assistant Financial Officer, an Assistant Secretary and such other officers as it determines to be necessary. Officers other than the President need not be Directors. Any person may hold more than one office. Except for Declarant and Neighborhood Builder representatives, anyone serving as a Neighborhood Corporation board member or officer cannot be a Master Association officer.

3.2. ELECTION OF OFFICERS.

The Board shall annually elect the Master Association's officers at the new Board's Organization Meeting. Each officer shall hold his office at the pleasure of the Board, until he resigns, is removed, is otherwise disqualified to serve, or his successor is elected and qualified to serve.

3.3. REMOVAL OF OFFICERS.

Upon an affirmative vote of a majority of the Board, any officer may be removed, either with or without cause, and his successor elected. Any officer may resign at any time by giving written notice to the Board or to the President or Secretary. Any such resignation is effective on the date of receipt of the resignation or at any later time specified in the resignation. Unless specified in the resignation, acceptance of the resignation by the Board is not necessary to make it effective.

3.4. COMPENSATION.

Officers may not receive any salary or compensation for their services as officers unless such compensation is approved by the Neighborhood Representatives; provided, however, that (i) nothing in these Bylaws precludes any officer from serving the Master Association in some other capacity and receiving compensation therefor, (ii) any officer may be reimbursed for actual expenses incurred in the performance of Master Association duties, and (iii) no officer, employee or director of Declarant, a Neighborhood Builder or any affiliate of Declarant or Neighborhood Builder may receive any compensation for service as an officer of the Master Association.

3.5. PRESIDENT.

The President is the chief executive officer of the Master Association and is responsible for the following:

3.5.1. **Meetings.**

Presiding at all Master Association, Neighborhood Representative and Board meetings,

3.5.2. **General Powers.**

Exercising all general powers and duties which are usually vested in the office of the President of a corporation,

3.5.3. **Supervision.**

Subject to the control of the Board, exercising general supervision, direction and control of the Master Association's business, and

3.5.4. **Other Powers.**

Exercising such other powers and duties as may be prescribed by the Board or these Bylaws.

3.6. **VICE PRESIDENT.**

The Vice President shall take the President's place and perform the President's duties whenever the President is absent, disabled, refuses or is unable to act. If neither the President nor the Vice President is able to act, the Board shall appoint some other member of the Board to do so on an interim basis. The Vice President shall also perform such other duties as prescribed by the Board or these Bylaws.

3.7. **SECRETARY.**

The Secretary is responsible for the following:

3.7.1. **Minutes.**

Ensuring minutes and other records of all meetings of the Board, Neighborhood Representative meetings and decisions and Master Association committee meetings are taken and kept at the Master Association's principal office or such other place as the Board may direct,

3.7.2. **The Seal.**

Keeping the Master Association's seal in safe custody,

3.7.3. **Other Master Association Documents.**

Keeping charge of such books and papers as the Board may direct,

3.7.4. **Notices of Meetings.**

Giving, or causing to be given, notices of meetings of the Members, Neighborhood Representatives and of the Board,

3.7.5. **Records.**

Keeping the information required by Act Section 16-6a-1601 and authenticating records of the Master Association,

3.7.6. **Membership Register.**

Maintaining or causing to be maintained a record book of Members, listing the names, mailing addresses, e-mail addresses, and telephone numbers of the Members as furnished to the Master Association ("Membership Register") and recording or causing to be recorded the termination or

transfer of ownership by any Member in the Membership Register, together with the date of the transfer, and

3.7.7. **Miscellaneous.**

In general, performing all duties incident to the office of Secretary, and performing such other duties as prescribed by the Board or these Bylaws.

3.8. **CHIEF FINANCIAL OFFICER.**

The Chief Financial Officer is responsible for Master Association funds. The Chief Financial Officer is responsible for the following:

3.8.1. **Books of Account.**

Keeping, or causing to be kept, full and accurate accounts, tax records and records of business transactions of the Master Association, including accounts of all assets, liabilities, receipts and disbursements in books belonging to the Master Association,

3.8.2. **Valuables.**

Being responsible for the deposit of all money and other valuable effects in the name and to the credit of the Master Association in such depositories as the Board designates,

3.8.3. **Disbursements.**

Disbursing the Master Association's funds as ordered by the Board,

3.8.4. **Accounting.**

Rendering to the President and Directors, upon request, an account of all transactions and of the Master Association's financial condition, and

3.8.5. **Other Powers.**

Exercising such other powers and performing such other duties prescribed by the Board or these Bylaws.

**ARTICLE IV
NEIGHBORHOOD REPRESENTATIVES**

Each Neighborhood is assigned a Neighborhood Representative to represent the Members when voting on certain issues. This Article describes the duties of the Neighborhood Representatives, establishes the procedures for the Members to use when electing their Neighborhood Representatives, and establishes the procedures Neighborhood Representatives must follow when they must vote on issues. Each Neighborhood Representative is entitled to cast the number of votes equal to the number of votes assigned to the Members the Neighborhood Representative represents. For example, if the Neighborhood Representative represents a Neighborhood composed of forty Residences, all owned by Persons who are not the Declarant, the Neighborhood Representative will have forty votes. The Declarant will have its own

representative, called the "Declarant's Neighborhood Representative" who will be appointed by the Declarant and entitled to cast all votes held by the Declarant.

Neighborhood Representative Responsibilities:

- Attend Neighborhood Representative Meetings
- Cooperate with the Master Association Board
- Publicize Social Events
- Inform Members of Actions

- Assist Nominating Committee
- Coordinate Member Votes

4.1. ESTABLISHMENT OF DELEGATES.

Each Neighborhood defined in the Master Declaration and Supplemental Declarations shall be represented by a Neighborhood Representative and an alternate Neighborhood Representative. The Neighborhood Representatives described in this Article are "Delegates" given some of the authority of the Members as defined in Act Section 16-6a-613. The powers, duties, qualifications and other aspects of the Neighborhood Representatives are established in this Article. This Article is an exclusive and permanent assignment of rights and powers of Members to the Neighborhood Representatives. Any right or power given to the Neighborhood Representatives cannot be exercised by the Members.

4.2. POWERS AND DUTIES.

Neighborhood Representatives have the following duties:

4.2.1. Attend Neighborhood Representative Meetings.

To regularly attend meetings of the Neighborhood Representatives and participate in all votes of the Neighborhood Representatives.

4.2.2. Neighborhood Meetings.

To preside over meetings of their Neighborhoods.

4.2.3. Special Benefit Areas.

To participate in the operation of the Special Benefit Areas as required by the Board.

4.2.4. Cooperation with the Board.

To cooperate with the Master Association Board to distribute information to Members and, when requested, assist in distributing and collecting ballots or proxies of the Members.

4.2.5. Publicizing Social Events.

To assist in publicizing social events at the request of the Board.

4.2.6. Inform Members.

To promptly inform Members the Neighborhood Representative represents of proposed and final actions of the Neighborhood Representatives.

| | | | | |
|---|--|---|--|--|
| <p><i>set record date for Members receiving notice of meeting (not applicable if vote is by written ballot)</i></p> | <p><i>set record date for Members entitled to vote</i></p> | <p><i>notice of meeting sent out (not applicable if vote is by written ballot) in accordance with a schedule set by the Act</i></p> | <p><i>ballot sent out (not applicable if vote is at meeting)</i></p> | <p><i>select Neighborhood Representative and alternate by written ballot or at a meeting</i></p> |
|---|--|---|--|--|

There are three types of Neighborhood Representatives: those who represent Neighborhoods without Neighborhood Corporations, those who represent Neighborhoods with Neighborhood Corporations, and the Declarant's Neighborhood Representative. In Neighborhoods without Neighborhood Corporations, the first Neighborhood Representative's term of office is set in the Master Declaration or a Supplemental Declaration. After the first Neighborhood Representative serves his term, the following Neighborhood Representatives will serve three-year terms. For each Neighborhood with a Neighborhood Corporation, the Neighborhood Representative is the President of the Neighborhood Corporation so his term will be the same as his term of office as President. The same rules apply to terms of office for alternate Neighborhood Representatives. The Declarant's Neighborhood Representative's term of office is indefinite. He will serve until either the Declarant appoints a replacement or the Declarant's right to have the Declarant's Neighborhood Representative expires.

4.4. GENERAL RULES.

4.4.1. Selection of First Neighborhood Representative.

The first Neighborhood Representative and alternate for each Neighborhood must be selected within six (6) months after the first Close of Escrow in the Neighborhood.

4.4.2. Neighborhood With No Representation.

If, for any reason, a Neighborhood does not have a Neighborhood Representative or an alternate, the Board shall have the power to appoint a qualified person to fill the position. At the Board's request, the Nominating Committee will seek volunteers to fill the position. If no qualified person is willing to serve as a Neighborhood Representative, the President of Master Association will be the Neighborhood Representative. Notices of all appointments must be distributed to the Members in the affected Neighborhoods within no more than sixty (60) days after the date of the appointment.

4.4.3. Term of Office.

Neighborhood Representatives and alternates may serve consecutive terms. There is no maximum limit on the number of terms a person can serve as a Neighborhood Representative or alternate.

4.4.4. Vacancies.

A vacancy in the office of a Neighborhood Representative shall exist on the occurrence of the following: (a) the death or written resignation of any Neighborhood Representative; (b) the declaration by resolution of the Board of a vacancy in the office of a Neighborhood Representative who has not satisfied the requirements set in Section 4.3.2; (c) the failure of

Members to elect a Neighborhood Representative; or (d) the occurrence of any other events resulting in a vacancy as provided under the Act.

4.4.5. **Removal by the Master Association Board.**

The Master Association Board has the power to remove any Neighborhood Representative who the Board determines is not performing the duties of a Neighborhood Representative listed in Section 4.3.2.

4.5. **NEIGHBORHOODS WITHIN A SINGLE NEIGHBORHOOD CORPORATION'S JURISDICTION.**

Where all Residences subject to a Neighborhood Declaration also comprise all of the Residences in a Neighborhood, the rules established in this Section apply. For all other Neighborhoods, the rules established in Section 4.6 apply.

4.5.1. **Selection of Neighborhood Representative and Alternate.**

The president of the Neighborhood Corporation created pursuant to that Neighborhood Declaration shall be the Neighborhood Representative. The board of directors of the Neighborhood Corporation shall appoint one of the board members as the alternate Neighborhood Representative.

4.5.2. **Term of Office.**

The term of office for each Neighborhood Representative and alternate shall be coincident with such person's term of office as an officer or director of the Neighborhood Corporation.

4.5.3. **Vacancies.**

Vacancies in the Neighborhood Representative position will be filled by the new President of the Neighborhood Corporation. Vacancies in the alternate Neighborhood Representative position will be filled by the board of directors of the Neighborhood Corporation.

4.5.4. **Removal.**

An officer or director of a Neighborhood Corporation serving as a Neighborhood Representative or alternate is deemed removed concurrently with his or her removal as an officer or director of the Neighborhood Corporation.

4.6. **OTHER NEIGHBORHOODS.**

4.6.1. **Selection of Neighborhood Representative and Alternate.**

Neighborhood Representatives and alternates shall be selected in an election set by the Board of Directors. The election may be held at a meeting of the Neighborhood or by written ballot as determined by the Board. The Board of Directors or the Nominating Committee will solicit applications from Members in the Neighborhood to serve as the Neighborhood Representative for a period ending at least thirty (30) days before the date of the Neighborhood Representative election. If, after the close of nominations, only one person is nominated as the Neighborhood Representative, the Board may, without further action, declare that the person who was nominated and qualified to be elected has been elected.

4.6.2. **Quorum and Approval.** At least a majority of the voting power in the Neighborhood holding the election must cast votes for the election to be valid. If the

election is valid, the person receiving the highest number of votes will be the Neighborhood Representative and the person receiving the second highest number of votes will be the alternate Neighborhood Representative.

4.6.3. **Term of Office.**

The term of office of the first Neighborhood Representative and alternate will begin on the date the Neighborhood Representative and alternate are selected and terminate on the date set in the Master Declaration or a Supplemental Declaration. The term of office of all other Neighborhood Representatives and alternates shall be three (3) years.

4.6.4. **Vacancies.**

Vacancies occurring for any reason other than expiration of a Neighborhood Representative's term shall first be filled by the alternate Neighborhood Representative. If there is no alternate Neighborhood Representative, then the vacancy shall be filled by either a vote of the Members in the Neighborhood or the Board. If the alternate Neighborhood Representative becomes the Neighborhood Representative, a new alternate shall be selected either a vote of the Members in the Neighborhood or the Board. Any person selected to fill a vacancy occurring before expiration of a term of office shall serve the remainder of the unexpired term of office of the predecessor Neighborhood Representative or alternate.

4.6.5. **Removal.**

Neighborhood Representatives and alternates may be removed by the Members in their Neighborhoods before the expiration of their terms of office. A Neighborhood Representative or alternate is removed if the number of votes cast for removal would be sufficient to elect the Neighborhood Representative or alternate. Members in a Neighborhood who wish to have a Neighborhood Representative or alternate removed must direct their requests to the Nominating Committee. At least five percent (5%) of the Members in a Neighborhood must sign a petition for removal before the Nominating Committee is required to hold a removal election. The removal election may be held at a meeting or by written ballot. If a removal election is held, the Neighborhood Representative or alternate whose removal has been proposed must be given an opportunity to be heard. If the Neighborhood Representative or alternate is removed, a replacement may be elected at the same time. The Board may establish additional procedures for removal elections in the Community Guidelines.

4.6.6. **Voting by Proxy.**

Votes may be cast at a meeting in person or by proxy. Proxies must comply with Act Action 16-6a-712.

4.6.7. **Place of Meetings.**

Meetings shall be held in the Properties or such other practical and convenient place in the City as designated by the Board.

4.6.8. **Calling Meetings.**

The Board shall call a meeting of the Members in a Neighborhood (a) as directed by resolution of a majority of a quorum of the Board, (b) by request of any Person authorized by a resolution of the Board to call a meeting, or (c) upon receipt of a petition that states the purpose for which the meeting is to be held and which is signed by Members representing at least ten percent (10%)

of the Master Association's voting power in the Neighborhood. The Secretary shall give notice of any meeting within thirty (30) days after adoption of such resolution or receipt of such request or petition. The notice must state the date, time and places of such meeting and the general nature of the business to be transacted. The meeting must be held not less than thirty-five (35) nor more than ninety (90) days after adoption of such resolution or receipt of such request or petition. No business may be transacted at a meeting except as stated in the notice.

4.6.9. **Notice.**

The Secretary shall send a notice of each meeting delivered (i) in a manner and within the timeframes set by Act Section 16-6a-704(3), or (ii) in any other fair and reasonable manner set by the Board. The Notice must include the date, place and time of the meeting and any other information required by Act Section 16-6a-704. The notice may set forth time limits for speakers and other procedures for running the meeting.

4.6.10. **Record Dates.**

The Board may fix a date as a record date for determining which Members are entitled to notice of any meeting of a Neighborhood. The record date so fixed must be not more than seventy (70) days before the date of the meeting. If the Board does not fix a record date for notice, the record date is the close of business on the business day preceding the day on which notice is given. In addition, the Board may fix a date in the future as a record date for the determination of the Members entitled to vote at any meeting of a Neighborhood or Special Benefits Area or by written ballot. The record date so fixed must be not more than seventy (70) days before the date of the meeting or cut off date for receipt of the ballot. If the Board does not fix a record date for determining Members entitled to vote, Members on the day of the meeting or the date the written ballot is distributed who are otherwise eligible to vote are entitled to vote at the meeting.

4.6.11. **Order of Business.**

Meetings must be conducted in accordance with a recognized system of parliamentary procedure or such parliamentary procedures as the Master Association may adopt. The order of business at all meetings of a Neighborhood is as follows: (a) roll call to determine the voting power represented at the meeting; (b) proof of notice of meeting or waiver of notice; (c) reading of minutes of preceding meeting (if any); (d) unfinished business; and (e) new business.

4.6.12. **Action By Written Ballot.**

Any action which may be taken at a meeting of the Members in a Neighborhood may be taken without a meeting by written ballot. Ballots must be distributed to every member in the Neighborhood entitled to vote and be solicited and returned in the same manner as provided for the giving of notice of meetings. Such solicitations must specify (a) the number of responses needed to meet the quorum requirements, (b) the percentage of approvals necessary to approve the action, (c) the time by which ballots must be received to be counted, and (d) must be accompanied by written information sufficient to permit the members to reach an informed decision on the matter. The form of written ballot set forth each proposed action and must afford an opportunity to specify a choice between approval and disapproval of each matter. Receipt within the time period specified in the solicitation of (i) a number of ballots which equals or exceeds the quorum which would be required if the action were taken at a meeting, and (ii) a number of approvals which equals or exceeds the number of votes which would be required for approval if the action were taken at a meeting at which the total number of votes cast was the

same as the total number of ballots cast, constitutes approval by written ballot. Written ballots may not be revoked.

4.6.13. **Distribution of Ballots.**

The Board will provide copies of the ballot and any accompanying information to the appropriate Neighborhood Representatives. At the Board's request, the Neighborhood Representatives will assist in collecting written ballots from Members and returning written ballots to the Board.

4.6.14. **Action By Written Consent.**

Any action that may be taken by a Neighborhood may be taken by written consent in accordance with the procedure established in Act Section 16-6a-707.

4.6.15. **Minutes, Presumption of Notice.**

Minutes or a similar record of the proceedings of meetings of Members in a Neighborhood, when signed by the President or Secretary, shall be presumed truthfully to evidence the matters set forth therein. A recitation in the Minutes executed by the Secretary that notice of the meeting was properly given constitutes prima facie evidence that such notice was given.

4.7. **DECLARANT'S NEIGHBORHOOD REPRESENTATIVE.**

Declarant is entitled to appoint one (1) Neighborhood Representative ("Declarant's Neighborhood Representative") to represent Declarant at all meetings of the Neighborhood Representatives and to cast all of the Class B votes which Declarant is entitled to cast. At any time, Declarant may change the person which it has appointed to serve as Declarant's Neighborhood Representative and may also designate an alternate Declarant's Neighborhood Representative. Declarant must give written notice to the Board before any such appointment or change in appointment is effective.

4.8. **VOTING.**

For a partial list of the issues to be voted on by Neighborhood Representatives, see the chart in Article V.

4.8.1. **Generally.**

Neighborhood Representatives must act personally at a meeting, by written consent or by written ballot, and may not act by proxy. If a Neighborhood Representative is not present at a meeting of the Neighborhood Representatives, then the alternate for such absent Neighborhood Representative may attend the meeting and exercise all Neighborhood Representative powers. If the previously absent Neighborhood Representative arrives before the adjournment of a meeting, the alternate is no longer entitled to act in the place of such Neighborhood Representative; provided that such relinquishment of authority by the alternate does not invalidate any matter previously voted or acted upon by the alternate in his or her temporary capacity as Neighborhood Representative. Each Neighborhood Representative shall exercise his voting power as the Neighborhood Representative determines is appropriate. Declarant's Neighborhood Representative shall exercise all of the Class B voting power. All votes represented by Declarant's Neighborhood Representative shall be cast in the manner directed by Declarant.

4.8.2. **Soliciting Member Views.**

When Neighborhood Representatives have notice in advance of a vote that will be taken, the Neighborhood Representatives shall solicit opinions from the Members they represent to identify the Members' views regarding the issue to be voted on. Within sixty (60) days after a vote is taken, the Board will announce the results of the vote and the way each Neighborhood Representative voted.

4.8.3. **Quorum and Approval.**

The presence in person of Neighborhood Representatives representing at least a majority of the Master Association's voting power constitutes a quorum. The Neighborhood Representatives present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Neighborhood Representatives to leave less than a quorum, if any action taken (other than adjournment) is approved by the votes required in Section 4.8.4 (or such greater percentage of Neighborhood Representatives as may be required by the Governing Documents for any specific action). The affirmative vote of Neighborhood Representatives representing a majority of a quorum of the voting power of the Classes of Membership required by Section 1.6.2 constitutes approval.

4.9. **MEETINGS.**

4.9.1. **Place of Meetings of Neighborhood Representatives.**

Meetings of the Neighborhood Representatives shall be held in the Properties or such other practical and convenient place within the City as designated by the Master Association's Board.

4.9.2. **Annual Meetings of Neighborhood Representatives.**

The Neighborhood Representatives shall gather once a year for an annual meeting. The date of the first annual meeting of Neighborhood Representatives shall be set by the Board, but shall be no later than one (1) year after the first Close of Escrow in the Properties. Thereafter, the annual meetings shall be held on or about the anniversary date of the first annual meeting. The annual meetings of the Neighborhood Representatives shall be open to attendance by all Members and first Mortgagee representatives to the extent of the space available in the meeting room.

4.9.3. **Special Meetings of Neighborhood Representatives.**

The President shall call a special meeting of all Neighborhood Representatives, as directed by resolution of a majority of a quorum of the Board, request from any Person authorized by the Board to call a special meeting, or upon receipt of a petition signed by Members or Neighborhood Representative(s) representing at least ten percent (10%) of the Master Association's voting power. The Secretary shall give notice of any special meeting within twenty (20) days after adoption of such resolution or receipt of such request or petition. The notice must state the date, time and place of the meeting and the general nature of the business to be transacted. The special meeting must be held not less than thirty-five (35) days nor more than ninety (90) days after adoption of such resolution or receipt of such petition. No business may be transacted at a special meeting except as stated in the notice. Special meetings of the Neighborhood Representatives are open to attendance by all Members and first Mortgagee representatives to the extent of the space available in the meeting room.

4.9.4. **Adjourned Meetings.**

If any meeting of Neighborhood Representatives cannot be organized because a quorum is not present, Neighborhood Representatives representing a majority of the voting power present may adjourn the meeting to another time.

4.9.5. Notice of Meetings.

The Secretary must send a notice of each meeting of Neighborhood Representatives to each Neighborhood Representative of record, to the Members, and to each first Mortgagee who has filed a written request for notice with the Secretary, (i) in a manner and within the time frames set by Act Section 16-6a-704(3)(a), or (ii) in any other fair and reasonable manner set by the Board. The notice must include the date, place and time of the meeting any other information required by Act Section 16-6a-704.

4.9.6. Record Date.

The Board may fix a date as a record date for determining the voting power represented by each Neighborhood Representative. The record date so fixed must be not more than seventy (70) days before the date of the meeting or the date the written ballot is distributed. If the Board does not fix a record date, the record date is the close of business on the business day preceding the day on which the meeting is held or the ballot is distributed.

4.9.7. Order of Business.

Meetings of Neighborhood Representatives must be conducted in accordance with a recognized system of parliamentary procedure or such parliamentary procedures as the Master Association's Board may adopt. The order of business at all meetings of the Neighborhood Representatives is as follows: (a) roll call to determine the voting power represented at the meeting; (b) proof of notice of meeting or waiver of notice; (c) reading of minutes of preceding meeting; (d) reports of officers; (e) reports of committees; (f) unfinished business; and (g) new business.

4.10. **ACTION BY WRITTEN BALLOT.**

Any action which may be taken at a meeting of the Neighborhood Representatives may be taken without a meeting by written ballot of the Neighborhood Representatives. Ballots must be distributed to every Neighborhood Representative entitled to vote in the same manner as provided in Section 4.9.5 for the giving of notice of meetings of Neighborhood Representatives. Ballot solicitations must specify (a) the number of responses needed to meet the quorum requirements, (b) the percentage of approvals necessary to approve the action (other than the election of Directors), (c) the time by which ballots must be received to be counted, and (d) be accompanied by written information sufficient to permit the Neighborhood Representative to reach an informed decision on the matter. The form of written ballot must afford set forth each proposed action and an opportunity to specify a choice between approval and disapproval of each matter. Receipt within the time period specified in the solicitation of both (A) a number of ballots representing voting power which equals or exceeds the quorum which would be required if the action were taken at a meeting, and (B) a number of approvals which equals or exceeds the number of votes which would be required for approval if the action were taken at a meeting at which the total number of votes cast was the same as the total number of votes cast by written ballot, constitutes approval by written ballot. Written ballots may not be revoked.

4.11. **ACTION BY WRITTEN CONSENT.**

Any action that may be taken by the Neighborhood Representatives, except election of Directors, may be taken by written consent in accordance with the procedure established in Act Section 16-6a-707.

4.12. MINUTES, PRESUMPTION OF NOTICE.

Minutes or a similar record of the proceedings of meetings of Neighborhood Representatives, when signed by the President or Secretary, shall be presumed truthfully to evidence the matters set forth therein. A recitation in the Minutes executed by the Secretary that notice of the meeting was properly given constitutes prima facie evidence that such notice was given.

**ARTICLE V
ACTIONS BY MASTER ASSOCIATION MEMBERS**

This Article describes how the Members make decisions, the minimum quorum requirement for Member votes, the number of Members required to approve proposals and other procedures involved with seeking Member approval of matters. Because the Master Association may eventually have several thousand Members, decisions to be made by the entire Membership will be made by written ballot and not at meetings. In some circumstances, such as when Neighborhood Representatives are elected, meetings of Members in a Neighborhood may be held. Other parties are given the right to approve actions of the Master Association too.

Other parties are given the right to approve actions of the Master Association. The following is a summary of the issues that can be decided by the various parties.

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| <i>Board of Directors</i> | <ul style="list-style-type: none"> • <i>All issues that are not reserved exclusively to the Members and/or the Neighborhood Representatives and amendments to the Articles</i> |
| <i>Neighborhood Representatives</i> | <ul style="list-style-type: none"> • <i>Certain amendments to the Master Declaration, the Articles and the Bylaws</i> • <i>Assessment increases and imposition of special assessments</i> • <i>Annexations to the Properties that are not made by the Declarant or Neighborhood Builders</i> • <i>Directors' and officers' compensation (if any)</i> |
| <i>The Entire Membership</i> | <ul style="list-style-type: none"> • <i>Certain amendments to the Bylaws and the Master Declaration</i> • <i>Litigation expenses the Master Association will incur as a plaintiff</i> |
| <i>Each Neighborhood</i> | <ul style="list-style-type: none"> • <i>Elect and remove the Neighborhood Representative for that Neighborhood</i> |
| <i>Declarant</i> | <ul style="list-style-type: none"> • <i>Certain amendments to the Articles, Bylaws and the Master Declaration</i> |

| | |
|-------------------------|--|
| | <ul style="list-style-type: none"> • <i>Certain actions of the Master Association listed in Section 5.3 of the Master Declaration</i> |
| <i>First Mortgagees</i> | <ul style="list-style-type: none"> • <i>Items listed in Master Declaration Section 14.2.3</i> |

5.1. VOTING RIGHTS.

The Master Association's classes of voting Membership are set forth in Section 1.6.1.

5.2. ACTIONS BY THE ENTIRE MEMBERSHIP.

The requirement for holding an annual meeting of the Members is eliminated. Any actions that must be taken by the entire Membership of the Master Association shall be taken by written ballot in accordance with the following procedure.

5.2.1. Quorum Requirement.

A majority of the Master Association's voting power constitutes a quorum of the Membership.

5.2.2. Approval Requirement.

Any action which may be taken by the Members of the Master Association must be approved by a majority of a quorum of the voting power of the classes of membership as required by Section 1.6.2.

5.2.3. Record Date.

The Board may fix a date in the future as a record date for determining which Members are entitled to vote. The record date so fixed must be not more than seventy (70) days before the date of the vote. If the Board does not fix a record date for determining Members entitled to vote, Members on the date the written ballot is distributed who are otherwise eligible to vote are entitled to vote.

5.2.4. Action By Written Ballot.

Ballots must be delivered to every Member entitled to vote. Solicitations for ballots must specify (a) the number of responses needed to meet the quorum requirements, (b) the percentage of approvals necessary to approve the action, (c) the time by which ballots must be received to be counted, and (d) be accompanied by written information sufficient to permit the Member to reach an informed decision on the matter. The form of written ballot must set forth each proposed action and afford an opportunity to specify a choice between approval and disapproval of each matter.

5.2.5. Approval by Ballot.

Receipt within the time period specified in the solicitation of (i) a number of ballots which equals or exceeds the quorum which would be required if the action were taken at a meeting, and (ii) a number of approvals which equals or exceeds the number of votes which would be required for approval if the action were taken at a meeting at which the total number of votes cast was the same as the total number of ballots cast, constitutes approval by written ballot. Written ballots may not be revoked.

5.2.6. Distribution of Ballots.

The Board will also provide copies of the ballots and accompanying materials to the Neighborhood Representatives. At the Board's request, the Neighborhood Representatives will assist in collecting written ballots from Members and returning written ballots to the Board.

**ARTICLE VI
AMENDMENTS TO BYLAWS**

6.1. BOARD APPROVAL.

These Bylaws may be amended by a majority of the entire Board, if the amendment (i) is within the Board's power to adopt without Member approval pursuant to the Act and (ii) is not listed in Section 6.2. Any other amendment to these Bylaws requires approval by a majority of the entire Board and any other approvals required by Section 6.2.

6.2. NEIGHBORHOOD REPRESENTATIVE APPROVAL.

Amendments to Sections _____ must be approved by the Neighborhood Representatives. [?]

**ARTICLE VII
MISCELLANEOUS**

7.1. CONFLICTING PROVISIONS.

In case of any conflict between the Articles and these Bylaws, the Articles shall control; and in case of any conflict between the Master Declaration and these Bylaws, the Master Declaration shall control.

7.2. CHECKS, DRAFTS AND DOCUMENTS.

All checks, drafts, orders for payment of money, notes and other evidences of indebtedness issued in the name of or payable to the Master Association must be signed or endorsed in the manner and by the person or persons the Board designates by resolution, subject to the requirements of these Bylaws for withdrawing money from the Master Association's reserve accounts.

7.3. EXECUTION OF DOCUMENTS.

The Board may authorize any Person to enter into any contract or execute any instrument in the name and on behalf of the Master Association, and such authority may be general or confined to specific instances. Unless so authorized by the Board, no Person may bind the Master Association by any contract or engagement or pledge its credit or render it liable for any purpose or in any amount.

7.4. USE OF TECHNOLOGY.

Where allowed by applicable law, any information the Master Association, its Board of Directors, officers, Neighborhood Representatives or other representatives is required to distribute can be distributed by any system or technology designed to record and communicate messages, facsimile, electronic mail, or other electronic means.

7.5. AVAILABILITY OF MASTER ASSOCIATION DOCUMENTS.

7.5.1. Records To Be Maintained.

The Master Association shall maintain at its principal office (or at such other place within or near the Properties as the Board may prescribe) the Governing Documents, books of account, minutes of meetings of Members, Neighborhood Representatives, the Board and committees, the Membership Register and any other documents required by law to be maintained by the Master Association (collectively, the "Master Association Documents"), each of which shall be made available for inspection and copying by any Member or the Member's duly appointed representative in accordance with the Act.

7.6. FISCAL YEAR.

The Board shall designate the Master Association's Fiscal Year. The Fiscal Year may be changed by the Board.

7.7. STATEMENTS IN ITALICS.

The portions of these Bylaws printed in italics are provided as simplified, general explanations of the purposes of the Articles and Sections of these Bylaws and the scheme of governance for the Properties. The statements in italics are provided for convenience and may not be considered in resolving questions of interpretation or construction of the Governing Documents.

ARTICLE VIII NOTICE AND HEARING PROCEDURE

If a Person believes a violation of the Governing Documents is being committed, the Person can report the violation to the Board. This Article establishes the procedure for submitting complaints. It also sets the procedure the Board will use when hearing complaints and determining if sanctions will be imposed.

8.1. INITIAL COMPLAINT.

Persons who believe a violation of the Governing Documents has occurred may file a violation complaint in a form authorized by the Board with a Person designated by the Board. The Board will then begin the enforcement process. In its discretion, the Board can issue one or two violation letters to the Person alleged to have committed the violation ("respondent") or set a hearing described in Section 8.2. The Board may direct the Community Manager to assist the Board in any of the steps the Board chooses to take in enforcing the Governing Documents except that decisions made at hearings must be made by the Board itself.

8.2. SCHEDULING HEARINGS.

A hearing before the Board to determine whether a sanction should be imposed may be initiated by the Board after receipt of at least one violation complaint. To initiate a hearing, the Board must deliver to the respondent a notice which includes all of the following:

8.2.1. Complaint.

The Board's failure to enforce the Governing Documents does not waive the right to enforce the same thereafter. The remedies provided by the Governing Documents are cumulative and not exclusive. However, any individual Member or Neighborhood Corporation must exhaust all available internal the Master Association remedies prescribed by the Governing Documents before that Member or Neighborhood Corporation may resort to a court of law for relief with respect to any alleged violation of the Governing Documents by another Member or Neighborhood Corporation.

CERTIFICATE OF SECRETARY

I, the undersigned, certify that:

1. I am the duly elected and acting Secretary of the Traverse Mountain Master Association Corporation, a Utah non-profit corporation; and

2. The foregoing Bylaws, composed of 30 pages including this page, constitute the Bylaws of the Traverse Mountain Master Association, duly adopted by the Board of Directors in Lieu of First Organizational Meeting dated effective as of _____, 2001.

IN WITNESS WHEREOF, I have hereunto subscribed my hand and affixed the seal of the Traverse Mountain Master Association this _____ day of _____, 2001.

Print Name: _____
Title: Secretary

(SEAL)

EXHIBIT D

**DESCRIPTION OR DEPICTION
OF MASTER ASSOCIATION PROPERTY IN PLAT A**

Plat - A

A Subdivision lying and situate in Section 25, Township 4 South, Range 1 West, and Sections 30 & 31, Township 4 South, Range 1 East, Salt Lake Base and Meridian, Lehi City, Utah County, Utah. Basis of Bearing for subject parcel being North $00^{\circ}17'58''$ West 2648.83 feet (measured) between the Utah County brass cap monuments monumentalizing the East line of the Southeast Quarter of said Section 30. Subject parcel being more particularly described as follows:

Beginning at a point on the Southerly right of way line of the Provo Reservoir Canal, (A.K.A. the "Murdock Canal"), as shown on that certain record of survey certified by John B. Stahl, Cornerstone Professional Land Surveys, project number PRW9601, filed as survey number 98-186 in the office of the Utah County Surveyor, and a point on the Northerly right of way line of State Road 92, said point being located SOUTH 1034.33 feet and WEST 1502.13 feet from said Southeast corner of Section 30; thence the following 3 (three) courses coincident with said road right of way (1) South $79^{\circ}43'26''$ West, 73.23 feet to a point of curvature; (2) Westerly 777.29 feet along the arc of a 5646.95 foot radius curve to the right (center bears North $10^{\circ}16'34''$ West) thru a central angle of $07^{\circ}53'12''$ to a point of tangency; (3) South $87^{\circ}36'38''$ West, 2052.76 feet to a point on the Easterly line of a 200.00 foot Rail Road right of way; Thence North $41^{\circ}37'36''$ West, 100.00 feet coincident with said right of way; Thence North $33^{\circ}07'41''$ East, 1563.97 feet to a point on the Southerly right of way line of said Provo Reservoir Canal; Thence North $06^{\circ}05'10''$ East, 90.07 feet to a point the Northerly right of way of said canal and a point on the arc of a non-tangent curve; Thence the following 45 (forty five) courses coincident with said canal right of way (1) Northwesterly 76.77 feet along the arc of a 165.00 foot radius curve to the right (center bears North $08^{\circ}24'42''$ East) thru a central angle of $26^{\circ}39'30''$ to a point of tangency; (2) North $54^{\circ}55'48''$ West 104.50 feet to a point of curvature; (3) Northwesterly 104.08 feet along the arc of a 435.00 foot radius curve to the left (center bears South $35^{\circ}04'12''$ West) thru a central angle of $13^{\circ}42'30''$ to a point of tangency; (4) North $68^{\circ}38'18''$ West 126.90 feet to a point of curvature; (5) Northwesterly 98.48 feet along the arc of a 365.00 foot radius curve to the right (center bears North $21^{\circ}21'42''$ East) thru a central angle of $15^{\circ}27'30''$ to a point of tangency; (6) North $53^{\circ}10'48''$ West 63.40 feet to a point of curvature; (7) Northwesterly 101.48 feet along the arc of a 965.00 foot radius curve to the right (center bears North $36^{\circ}49'12''$ East) thru a central angle of $06^{\circ}01'30''$ to a point of tangency; (8) North $47^{\circ}09'18''$ West 150.80 feet to a point of curvature; (9) Westerly 109.78 feet along the arc of a 135.00 foot radius curve to the left (center bears South $42^{\circ}50'42''$ West) thru a central angle of $46^{\circ}35'30''$ to a point of tangency; (10) South $86^{\circ}15'12''$ West 5.30 feet to a point of curvature; (11) Northwesterly 82.36 feet along the arc of a 165.00 foot radius curve to the right (center bears North $03^{\circ}44'48''$ West) thru a central angle of $28^{\circ}36'00''$ to a point of tangency; (12) North $65^{\circ}08'48''$ West 345.80 feet to a point of curvature; (13) Northwesterly 52.87 feet along the arc of a 115.00 foot radius curve to the right (center bears North $24^{\circ}51'12''$ East) thru a central angle of $26^{\circ}20'30''$ to a point of tangency; (14) North $38^{\circ}48'18''$ West 234.02 feet; (15) North $51^{\circ}11'42''$ East 15.00 feet; (16) North $38^{\circ}48'18''$ West 541.98 feet to a point of curvature; (17) Southwesterly 168.75 feet along the arc of a 150.00 foot radius curve to the left (center bears South $51^{\circ}11'42''$ West) thru a central angle of $64^{\circ}27'30''$ to a point of

tangency; (18) South 76°44'12" West 185.80 feet; (19) South 13°15'48" East 10.00 feet along a radial line to a point on the arc of a 110.00 foot radius curve; (20) Northwesterly 69.00 feet along the arc of said 110.00 foot radius curve to the right (center bears North 13°15'48" West) thru a central angle of 35°56'30" to a point of tangency; (21) North 67°19'18" West 275.90 feet to a point of curvature; (22) Northwesterly 79.19 feet along the arc of a 185.00 foot radius curve to the right (center bears North 22°40'42" East) thru a central angle of 24°31'30" to a point of tangency; (23) North 42°47'48" West 6.40 feet to a point of curvature; (24) Northwesterly 85.56 feet along the arc of a 185.00 foot radius curve to the right (center bears North 47°12'12" East) thru a central angle of 26°30'00" to a point of tangency; (25) North 16°17'48" West 4.60 feet to a point on the arc of a 360.00 foot radius curve; (26) Northwesterly 95.35 feet along the arc of said 360.00 foot radius curve to the right (center bears North 73°42'12" East) thru a central angle of 15°10'30" to a point; (27) North 01°07'18" West 84.40 feet to a point on the arc of a 200.00 foot radius curve; (28) Northwesterly 152.05 feet along the arc of said 200.00 foot radius curve to the left (center bears South 88°52'42" West) thru a central angle of 43°33'30" to a point; (29) North 44°40'48" West 136.10 feet to a point of curvature; (30) Southwesterly 171.64 feet along the arc of a 120.00 foot radius curve to the left (center bears South 45°19'12" West) thru a central angle of 81°57'00" to a point; (31) South 53°22'12" West 205.02 feet; (32) South 36°37'48" East 5.00 feet; (33) South 53°22'12" West 104.68 feet to a point of curvature; (34) Northwesterly 54.47 feet along the arc of a 65.00 foot radius curve to the right (center bears North 36°37'48" West) thru a central angle of 48°01'00" to a point of tangency; (35) North 78°36'48" West 45.80 feet to a point of curvature; (36) Northwesterly 253.93 feet along the arc of a 490.00 foot radius curve to the right (center bears North 11°23'12" East) thru a central angle of 29°41'30" to a point of tangency; (37) North 48°55'18" West 323.80 feet to a point on the arc of a 65.00 foot radius curve; (38) Northeasterly 137.52 feet along the arc of said 65.00 foot radius curve to the right (center bears North 41°04'42" East) thru a central angle of 121°13'00" to a point of tangency; (39) North 72°17'42" East 5.00 feet to a point of curvature; (40) Northeasterly 82.78 feet along the arc of said 335.00 foot radius curve to the left (center bears North 17°42'18" West) thru a central angle of 14°09'30" to a point; (41) North 58°08'12" East 45.30 feet to a point of curvature; (42) Northeasterly 116.75 feet along the arc of a 135.00 foot radius curve to the left (center bears North 31°51'48" West) thru a central angle of 49°33'01" to a point on a radial line; (43) South 81°24'48" East 20.00 feet (44) North 08°35'12" East 340.36 feet; (45) North 89°46'48" West 325.57 feet; Thence North 58°14'01" East 1157.87 feet; Thence North 32°03'41" West, 75.45 feet; Thence North 56°59'58" East, 80.01 feet to a point on the arc of a 10.00 foot radius curve; Thence Southeasterly 15.71 feet along the arc of said 10.00 foot radius curve to the left (center bears North 57°56'19" East) thru a central angle of 90°00'00" to a point; Thence South 44°30'03" East 69.63 feet; Thence North 57°56'19" East 344.03 feet to a point of curvature; Thence Southeasterly 221.35 feet along the arc of a 1171.00 foot radius curve to the right (center bears South 32°03'41" East) thru a central angle of 10°49'49" to a point; Thence Southeasterly 511.63 feet along the arc of a 636.53 foot radius curve to the left (center bears North 73°06'26" East) thru a central angle of 46°03'11"; Thence South 62°51'52" East 695.15 feet; Thence South 27°08'08" West 63.34 feet; Thence South 57°06'41" East 145.56 feet; Thence North 37°07'11" East 504.20 feet; Thence South 41°58'06" East 963.04 feet; Thence

South 88°22'28" West 129.07 feet; Thence South 82°36'40" West 82.57 feet; Thence South 35°00'51" West 51.69 feet; Thence South 12°46'27" East 144.88 feet; Thence South 25°35'38" East 374.51 feet; Thence South 40°24'50" East 342.59 feet; Thence North 49°41'31" East 35.31 feet; Thence South 50°23'45" East 109.31 feet; Thence South 41°27'45" East 236.78 feet; Thence South 44°49'12" East 236.66 feet; Thence South 46°00'25" East 139.50 feet; Thence South 52°05'32" East 653.47 feet; Thence South 36°10'44" West 416.83 feet; Thence South 57°14'11" East 326.56 feet; Thence South 33°30'07" West 446.38 feet; Thence South 33°30'07" West 81.21 feet; Thence South 66°23'12" East 1149.18 feet; Thence South 18°47'01" West 439.11 feet; Thence South 53°44'18" East 360.75 feet to a point on the arc of a 755.87 foot radius curve; Thence Southeasterly 58.25 feet along the arc of said 755.87 foot radius curve to the left (center bears North 36°15'37" East) thru a central angle of 04°24'56" to the point of beginning.

Less and Excepting that portion lying within the bounds of the Provo Reservoir Canal Right of Way, as physically located by that certain record of survey certified by John B. Stahl and filed as survey number 98-186 in the office of the Utah County Surveyor, and as deeded to the United States of America and Provo Reservoir Company by the following documents: Warranty Deed, recorded June 07, 1939, as Entry Number 5657, in Book 348, at Page 245 of Official Records; and Land Purchase Contract, recorded September 15, 1945, as entry Number 7688, in Book 484, at Page 266 of Official Records, and Warranty Deed recorded July 23, 1947, as Entry Number 8697, in Book 481, at Page 545 of Official Records.

PARCEL CONTAINS 250.96 ACRES

EXHIBIT E
SPECIAL BENEFIT AREA

Does not apply