

When recorded return to:  
71 25  
SPRINGVILLE CITY CORPORATION  
50 South Main Street  
Springville, Utah 84663

DECLARATION  
OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
OF  
MORNING SIDE SUBDIVISION  
A PLANNED UNIT DEVELOPMENT

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RANDALL A. COVINGTON  
UTAH COUNTY RECORDER  
2001 Sep 26 10:35 am FEE 71.00 BY JRD  
RECORDED FOR SPRINGVILLE CITY

RECITALS

Declarant is the owner of certain real property located in the City of Springville, Utah County, Utah, which is more particularly described in Exhibit A.

Declarant will convey the property subject to certain protective covenants, conditions, and restrictions as hereinafter set forth.

It is the desire and intention of Declarant to construct a Planned Unit Development.

DECLARATION

Declarant hereby declares that all of the property described below shall be held, sold, and occupied subject to the following covenants, conditions, restrictions, easements, and assessments. This Declaration and the Map shall be construed as covenants of equitable servitude, shall run with the property and be binding on all parties having any right, title or interest in the property or any part thereof, and their heirs, successors, and assigns.

The property is located in the City of Springville, Utah County, Utah and is described in Exhibit A which is attached hereto and incorporated herein by this reference.

ARTICLE I - DEFINITIONS

Section 1. Declaration means this instrument, and any amendments. This declaration is intended to comply with the requirements of Utah laws governing Planned Unit Developments.

Section 2. Morning Side Subdivision, a Planned Unit Development means the subdivision plat or Record of Survey Map recorded herewith entitled consisting of one (1) sheet, prepared and certified by Barry Anderson of Rollins, Brown & Gunnell, a Utah Registered Land Surveyor or any replacements thereof, or additions thereto.

Section 3. Property means the real property described in Exhibit A.

Section 4. Common Area means the portion of property owned by the Association, shown on the plat as dedicated to the common use and enjoyment of the owners. All area not occupied by buildings is designated as common area. The owner of each unit will have an equal undivided interest in the common area.

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Section 5. Owner means the entity, person or group of persons owning fee simple title to any unit within the property.

Section 6. Association means the Morning Side Home Owners Association, its successors and assigns.

Section 7. Member means every person or entity who holds membership in the Association. Every Member is an owner, and every owner is a member.

Section 8. Trustees means the governing body of the Association.

Section 9. Declarant means Earth & Image LC, Irewood LTD, B&L Park Place and the Declarant's successors and assigns.

Section 10. Mortgage includes "deed of trust" and Mortgagee includes "trust deed beneficiary".

Section 11. Unit means one of the fifty-six (56) units. The principal construction materials include brick, stucco, siding, concrete and metal. Electricity and gas are separately metered to each unit, and each unit has its own furnace, kitchen appliances, water heater and two-car garage. There shall be no more than fifty-six (56) units which are adequate to support the common area and which shall not overload the common area. The undivided interest of each unit in the common area shall be one point seventy-eight five seven percent. (1.7857).

## ARTICLE II - PROPERTY RIGHTS

Section 1. Title to the Common Area. The Declarant will convey fee simple title to the common area and limited common area to the Association, free and clear of all encumbrances and liens, prior to the conveyance of the first unit, but subject to this Declaration, and easements and rights-of-way of record. In accepting the deed, the Association will covenant to fulfill all the terms of this Declaration, to maintain the common area in good repair and condition at all times and to operate the common area at its own expense.

Section 2. Owners' Easements of Enjoyment. Every owner has a right and easement of use and enjoyment in and to the common area. This easement is appurtenant to and passes with the title to every unit, subject to:

- (a) The right of the Association to charge reasonable admission, use, and service and other fees for the use of any service or recreational storage, or parking facility situated upon the common area. No fees shall be charged for parking specifically designated on the plat as appurtenant to a unit.
- (b) The right of the Association to limit the number of guests of members using the common area.
- (c) The right of the Association to suspend the voting rights of a member for any period during which any assessment or portion thereof against his unit remains unpaid; and for a period of not to exceed sixty (60) days for any infraction of its published rules and regulations.
- (d) The right of the Association to enter into agreements or leases which provide for use of the common area and facilities of the Association.
- (e) The right of the Association to grant easements for water, sewer, gas, telephone, electricity and drainage purposes.
- (f) The right of the Association to take such steps as necessary or desirable to protect the common area against foreclosure.
- (g) The terms and conditions of this Declaration.
- (h) The right of the Association, through its Trustees, to adopt rules and regulations concerning the use of the common area.

Section 3. Declaration of Use. An owner is deemed to delegate his right of enjoyment to the common area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property, No one who is a non-resident shall have any such right of enjoyment.

Section 4. Rules. The Trustees shall have the authority to promulgate rules and regulations for the governance of the property, and persons within the property. These rules of the Association shall be made available for the inspection and copying by the owners.

Section 5. Legal Description of a Lot. Each conveyance or contract for the sale of a unit and every other instrument affecting title to a unit may describe the unit by the number shown on the Map with appropriate reference to the Map and to this Declaration, as each shall appear on the records of the County Recorder of Utah County, State of Utah, and in substantially the following form:

Lot \_\_\_\_\_ shown in the Record of Survey Map for Morning Side Subdivision, a Planned Unit Development appearing in the records of the County of Utah in Book \_\_\_\_\_, Page \_\_\_\_\_ of Plats, and as defined and described in the Declaration of Covenants, Conditions, and Restrictions of Morning Side Subdivision, a Planned Unit Development appearing in such Records in Book \_\_\_\_\_, Page \_\_\_\_\_. This conveyance is subject to the provisions of the Declaration of Covenants, Conditions, and Restrictions of Morning Side Subdivision, a Planned Unit Development.

### ARTICLE III - MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every owner is a member of the Association. The term "owner" includes contract purchasers but does not include persons who hold an interest merely as security for the performance of an obligation unless and until title is acquired by foreclosure or similar proceedings. Membership is appurtenant to and may not be separated from unit ownership. Membership in the Association automatically transfers upon transfer of title by the record owner to another person or entity.

Section 2. Voting Rights. The Association has two classes of voting membership:

CLASS A. Class A members are all members with the exception of the Declarant, as defined in the Declaration. Class A members are entitled to one vote for each unit owned. When more than one person holds an interest in any unit, the group of such persons shall be a member. The vote of such unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any unit. A vote is cast at any association meeting by any of such co-owners, whether in person or by proxy, is conclusively presumed to be the vote attributable to the unit concerned unless written objection is made prior to that meeting, or verbal objection is made at that meeting, by another co-owner of the same unit. In the event an objection is made, the vote involved shall not be counted for any purpose except to determine whether a quorum exists.

CLASS B. The Class B member is the Declarant. The Class B member is entitled to three (3) votes for each unit owned. The Class B membership may be converted to a Class A membership on the happening day of any of the following events, whichever occurs earlier:

- (a) the surrender of Class B membership status by the express written action of the Declarant; or
- (b) when the total votes outstanding in the Class A membership is equal to the votes outstanding in the Class B membership; or
- (c) seven (7) years after the date of the recording of this Declaration.

### ARTICLE IV - FINANCES AND OPERATIONS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant and each subsequent owner of any unit by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, covenants and agrees to pay the Association (1) annual assessments of charges; (2) special assessments for capital improvements, such assessments to be fixed, established, and

collected from time to time hereinafter provided; (3) any other amount or assessment levied or charged by the Association or Board of Trustees pursuant to this Declaration and (4) interest, costs of collection and a reasonable attorney's fee as hereinafter provided. All such amounts shall be a continuing lien upon the property. Successors-in-title shall not be personally liable for assessments delinquent at the time they took title unless that obligation is expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used (a) for the purpose of promoting the recreation, health, safety, and welfare of the residents of the property and (b) for the improvement and maintenance of properties, services, and facilities devoted to this purpose. The assessments must provide for but are not limited to, the payment of taxes on Association property and insurance maintained by the Association; the payment of the cost of repairing, replacing, maintaining and constructing or acquiring additions to the common area; the payment of the cost of repairing, replacing, and maintaining the front yards, and easements, the payment of administrative expenses of the Association, insurance deductible amounts, the establishment of a reserve account for repair, maintenance and replacement of those common and limited common areas which must be replaced on a periodic basis; and other primary purposes of the Association. The assessments may provide, at the discretion of the Trustees, for the payment of other charges including, without limitation, maintenance, management, utility, water charges, information, transportation to facilitate access to social services and related services.

Section 3. Maximum Annual Assessment. Until \_\_\_\_\_ following recording of this Declaration, the maximum annual assessment shall be \_\_\_\_\_ per unit. This amount shall be the basis of calculation for future maximum annual assessments.

- (a) From and after the date referred to above, the maximum assessment shall be increased each year not more than five percent (5%) above the maximum assessment for the previous year, without a vote of the membership.
- (b) The Association may change the basis and maximum of the assessments fixed by this Section prospectively for any annual period provided that any such change shall have the assent of sixty percent (60%) of the votes of each class of members, voting in person or by proxy, at a meeting duly called for this purpose.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments, the Association may levy in any assessment year a special assessment, applicable to the construction, reconstruction, repair, or replacement of common or limited common area structures, fixtures and personal property related thereto. Special assessments must have the assent of sixty percent (60%) of the votes of each class of members authorized to vote, in person or by proxy, at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under 3 and 4. Written notice of any meeting of members called for the purpose of taking any action authorized under Sections 3 and 4 shall be sent to all members at least five (5) but no more than fifteen (15) days in advance of said meeting. At the first meeting called, the presence at the meeting of members, or of proxies, entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the quorum requirement is not met at such a meeting, another meeting may be called, on at least forty-eight (48) hours advance written notice, and the required quorum at any such subsequent meeting shall be one-half of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than thirty (30) days following the preceding meeting.

Section 6. Uniform Rate of Assessment: Periodic Assessment. Both annual and special assessments must be fixed at a uniform rate for all units, provided, however that assessments shall not accrue against the Declarant so long as the Declarant has Class B membership. This method of determining the assessments, dues and charges may not be changed without the prior written approval of all first mortgagees. Annual, special and additional assessments may be collected on a monthly or quarterly basis, as the Trustees determine and will begin on the day of closing.

Section 7. Commencement of Annual Assessments. The annual assessment provided for herein shall commence to accrue on the first day of the month following conveyance of the common area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. In the absence of a determination by the Trustees as to the amount of said assessment, the first annual assessment shall be an amount equal to ninety percent (90%) of the maximum annual assessment provided above. At least thirty (30) days prior to the commencement of each new assessment period, the Trustees shall send a written notice of the annual assessment to each owner subject thereto. Receipt of the notice shall not be a prerequisite to validity of the assessment. The assessment due dates shall be established by the Trustees. The Trustees may provide for the payment of annual and special assessments in equal installments throughout the assessment year. The Trustees shall prepare a roster of the property and the assessments applicable thereto at the same time that it shall fix the amount of the annual assessment, which roster shall be kept by the Treasurer of the Association, who shall record payments of assessments and shall allow inspection of the roster by any member at reasonable times. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessment on a specified unit has been paid. Such certificates, when properly issued, shall be conclusive evidence of the payment of any assessment or fractional part thereof which is therein shown to have been paid.

Section 8. Effect of Non-Payment of Assessment and Remedies. Any assessment or installment thereof not paid within thirty (30) days after the due date therefor shall be delinquent and shall bear interest from the due date at the rate of eighteen percent (18%) per annum (or such lesser rate as the Trustees shall determine)

until paid. In addition, the Trustees may assess a late fee for each delinquent installment which shall not exceed ten percent (10%) of the installment. The Trustees may, in the name of the Association, (a) bring an action at law against the owner personally obligated to pay any such delinquent assessment without waiving the lien of assessment, or (b) may foreclose the lien against the property in accordance with the laws of the state of Utah applicable to the foreclosure of mortgages, or in any other manner permitted by law, and/or (c) may restrict, limit or totally terminate any or all services performed by the Association in behalf of the delinquent member. There shall be added to the amount of any delinquent assessment the costs and expenses of any action, sale or foreclosure, and a reasonable attorney's fee, together with an account for the reasonable rental for the unit from time of commencement of the foreclosure. The Association shall be entitled to the appointment of a receiver to collect the rental income or the reasonable rental without regard to the value of the other security.

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Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage held by an institutional lender if the mortgage was recorded prior to the date the assessment became due. Sale or transfer of any unit shall not affect the assessment lien. However, the sale or transfer of any unit pursuant to foreclosure of a first mortgage, or any proceeding in lieu thereof, shall extinguish the assessment lien as to payments which become due prior to such sale or transfer. No sale or transfer, however, shall relieve a unit owner from personal liability for assessments coming due after he takes title or from the lien of such later assessments.

Section 10. Books, Records and Audit. The Association shall maintain current copies of the Declaration, Articles, Bylaws, Rules and other similar documents, as well as its own books, records and financial statements which shall all be available for inspection by unit owners and insurers as well as by holders, insurers and guarantors of first mortgages during normal business hours upon reasonable notice. A unit owner or holder, insurer or guarantor of a first mortgage may obtain an audit of the Association records at its own expense so long as the results of the audit are provided to the Association.

## ARTICLE V - INSURANCE

Section 1. Casualty Insurance. The Trustees shall keep all insurable improvements and fixtures of the common area insured against loss of damage by fire for the full insurance replacement cost thereof, and may obtain insurance against such other hazards as the Association may deem desirable. The Association may also insure any other hazards as the Association may deem desirable with the Association as the owner and beneficiary of such insurance. The insurance coverage with respect to the common area shall be written in the name of, and the proceeds thereof, shall be payable to, the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are common expenses which shall be included in the

regular annual assessments made by the Association. In addition to casualty insurance on the common area, the Trustees may elect to obtain and continue in effect, on behalf of all owners, adequate blanket casualty and fire insurance in such form as the Trustees deem appropriate in an amount equal to the full replacement value, without deduction for depreciation or coinsurance, of all the units including the structural portions and fixtures thereof. Insurance premiums from any such blanket insurance coverage and any other insurance premiums paid by the Association to be included in the regular annual assessments as levied by the Association. The insurance coverage with respect to the units shall be written in the name of, and the proceeds thereof shall be payable to, the Association as trustee for the owners.

Section 2. Casualty Insurance on Units. Each owner shall be responsible to keep all attached improvements insured against such losses or damages as the owner shall elect, and the owner shall repair and replace any damage to the improvements for which insurance is to be carried.

Section 3. Replacement or Repair of Property. In the event of damage or destruction of any part of the common area improvements, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a reconstruction assessment against all unit owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other common assessments made against such unit owners. In the event of damage or destruction by fire or other casualty to any portion of the development covered by insurance written in the name of the Association, the Trustees are empowered to and shall represent the members in any proceedings, negotiations, settlements or agreements. The Association is appointed attorney-in-fact of each owner for this purpose.

Section 4. Liability Insurance. The Trustees shall obtain a comprehensive policy of public liability insurance covering all of the common and limited common property for at least \$1,000,000.00 per occurrence for personal or bodily injury and property damage that results from the operation, maintenance or use of the common area. Liability insurance policies obtained by the Association shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an owner because of negligent acts of the Association or other owners.

Section 5. Fidelity Insurance. The Trustees may elect to obtain fidelity coverage against dishonest acts on the part of managers, Trustees, officers, employees, volunteers, management agents or others responsible for handling funds held and collected for the benefit of the owners or members. In procuring fidelity insurance the Trustees shall seed a policy which shall (1) name the Association as obligee or beneficiary, plus (2) be written in an amount not less than the sum of (i) three months' operating expenses and (ii) the maximum reserves of the Association which may be on



deposit at any time, and (3) contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee".

Section 6. Annual Review of Policies. All insurance policies shall be reviewed at least annually by the Trustees in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs of the property which may be damaged or destroyed.

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#### ARTICLE VI - ARCHITECTURAL CONTROL COMMITTEE

No structure, building, wall or addition, extension or expansion of any of the foregoing shall be commenced, erected or maintained on the property, nor shall any exterior addition of change or alteration to any unit be made until the plans and specifications showing the nature, kind, shape, height, materials, colors and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Trustees, or, if such a committee is in existence, by an Architectural Control Committee, composed of three (3) or more representatives appointed by the Trustees. In the event that said Trustees or their designated committee fail to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to them, approval will not be required and compliance with this article will be deemed to have been made. The Architectural Control Committee shall have the power to adopt and amend standards and regulations. Notwithstanding the foregoing, without prior written approval of at least sixty percent (60%) of the owners, neither the Association nor the Architectural Control Committee shall have the power, by act or omission to change, waive or abandon any plan, scheme or regulations pertaining to the architectural design or the exterior appearance or maintenance of units, and the maintenance of the common and limited common areas, including walls, fences, driveways, lawns and plantings.

#### ARTICLE VII - EXTERIOR MAINTENANCE

Section 1. Exterior Maintenance. In addition to maintenance upon the common area, the Association shall provide exterior maintenance upon each unit's, front yard, and easements, common area, fences, street signs, lights, mailboxes, trees, shrubs, grass. The cost of regular exterior maintenance shall be a common expense and shall be added to and become part of the regular annual assessment.

Section 2. Maintenance by Owner. Each owner shall be solely responsible for maintenance to glass, doors and screens on his unit, and for any maintenance on his unit required due to willful or negligent acts. In the event an owner shall fail to perform this maintenance in a manner satisfactory to the Trustees, as determined by a two thirds (2/3) vote, they shall have the right to have such maintenance performed. The cost of such maintenance shall be added to and become part of the assessment to which such unit is subject.

Section 3. Access at Reasonable Hours. For the purpose solely of performing the maintenance required by this article, the Association, through its duly authorized agents or employees, shall have the right after reasonable notice to the owner, to enter upon any unit or limited common area at reasonable hours.

#### ARTICLE VIII - USE RESTRICTIONS

Section 1. Construction, Business, and Sale. Notwithstanding any provisions to the contrary herein contained, it shall be expressly permissible for Declarant to maintain such facilities and conduct such activities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction and sale of units during the period of construction and sale of said units and upon such portion of the premises as Declarant deems necessary including but not limited to a business office, storage areas, construction yard, signs, model units and sale offices. As part of the overall program of development of the property into a residential community and to encourage the marketing thereof, the Declarant shall have the right of use of the common area and facilities thereon, including any community buildings, without charge during the sales and construction period to aid in its marketing activities.

Section 2. General Use Restrictions. All of the property which is subject to this declarations us restricted to residential dwellings and buildings. All buildings or structures erected on the property shall be of quality construction. No building, storage shed or structure of any other kind of a temporary character, garage, barn, trailer, tent, or recreational vehicle, shall be placed or used on the property.

Section 3. Purposefully omitted.

Section 4. Quiet Enjoyment. No noxious or offensive activity shall be carried on upon any part of the property nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the owners or which shall in any way increase the rate of insurance.

Section 5. Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any of the said units, except that small dogs, cats, or other household pets, two or less in total number, may be kept provided that they are not kept, bred or maintained for any commercial purpose. Notwithstanding the foregoing, no animals or fowl may be kept on the property which result in an annoyance or are obnoxious, by noise, smell, or otherwise to unit owners. All pets must be kept in the unit or on a leash when in the common area and owners must clean up after their pets. These provisions may be made more restrictive by Rule of the Association.

Section 6. Use of Common Area. Except for the rights of ingress and egress, owners are hereby prohibited and restricted from using any of the common area, other

than as permitted in this Declaration or as may be allowed by the Trustees. It is expressly acknowledged and agreed by all parties concerned that this restriction is for the mutual benefit of all owners of units in the property and is necessary for the protection of the interests of all said owners in and to the common area. As part of the overall program of development of the property into a residential community and to encourage the marketing thereof, the Declarant shall have the right of use of the common area and facilities thereon, including any community buildings, without charge during the sales and construction period to aid in its marketing activities.

Section 7. Parking. No motor vehicle which is inoperable shall be allowed within the property, and any motor vehicle which remains parked for over seventy-two (72) hours shall be subject to removal by the Association, at the owner's expense. Parking spaces within the property shall be used for parking of motor vehicles actually used by the owner or his immediate family or guests for personal use and not for commercial use, and for non-residential parking. Recreational vehicles, boats, travel trailers and similar property may not be parked on the property unless permitted by the Association. Overnight parking is not allowed on any street within the property.

Section 8. Fences and Hedges. No fences, hedges or walls shall be erected or maintained upon any property except such as are installed in accordance with the initial construction of the buildings located thereon or as approved by the Trustees.

Section 9. External Apparatus. No unit owner shall cause or permit anything (including, without limitation, awnings, canopies or shutters) to hang, be displayed, or otherwise affixed to or placed on the exterior walls or roof or any part thereof, or on the outside of windows or doors, without the prior written consent of the Trustees.

Section 10. Exterior Television or Other Antennas. No exterior radio or other antennas, except one television antenna which shall not exceed four (4) feet in height, per unit, shall be placed, allowed or maintained upon any unit or upon any structure located upon the property without prior written approval of the Trustees.

Section 11. Garbage Removal. All rubbish, trash and garbage shall be regularly removed from the units and shall not be allowed to accumulate thereon. Garbage should be placed in proper containers.

Section 12. Interior Utilities. All utilities, fixtures and equipment installed within a unit, commencing at a point where the utility lines, pipes, wires, conduits or systems enter boundaries of a unit, shall be maintained and kept in repair by the owner thereof. An owner shall do no act nor any work that will impair any easement nor do any act nor allow any condition to exist which will adversely affect the other units or owners.

Section 13. Leases. Any lease or rental agreement shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the Articles of Incorporation, Bylaws and Rules and Regulations of the

Association and that any failure by lessee to comply with the terms of such documents shall be a default under the lease.

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#### ARTICLE IX - EASEMENTS

Section 1. Encroachments. Each unit and the property included in the common area shall be subject to an easement for encroachments created by construction, settling and overhangs, as designed or constructed by the Declarant. A valid easement for said encroachments and for the maintenance of the same, so long as it stands, shall and does exist. In the event the structure is partially or totally destroyed, and then rebuilt, the owners of the units so affected agree that minor encroachments or parts of the adjacent units or common area due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

Section 2. Utilities. There is hereby created a blanket easement upon, across, over, and under all of the property for ingress and egress for water, sewer, gas, telephone, and electricity, By virtue of this easement, it shall be expressly permissible for all public utilities serving the property to lay, construct, renew, operate, and maintain conduits, cables, pipes, mains, ducts, wires and other necessary equipment on the property, provided that all such services shall be placed underground. Notwithstanding anything to the contrary contained in this section, no sewers, electrical lines, water lines or other utilities may be installed or relocated on the property except as initially programmed and approved by the Declarant or thereafter approved by the Declarant or the Association. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant or the Association shall have the right to grant such easement on said property without conflicting with the terms thereof. All utilities that are installed in, upon, under or through the common area of the property shall be maintained under the direction of the Association.

Section 3. Police, Fire and Ambulance Service. An easement is hereby granted to all police, fire protection, ambulance services and all similar persons to enter upon the common area in the performance of their duties.

Section 4. Maintenance by Association. An easement is hereby granted to the Association, its officers, agents, employees and to any maintenance company selected by the Association to enter in or to cross over the common area to perform the duties of maintenance and repair.

Section 5. Other Easements. The easements provided for in this Article shall in no way affect any other recorded easement.

#### ARTICLE X - PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as part of the original construction of the units upon the property and placed on the dividing line between the unit shall constitute a party wall, and, to the extent not inconsistent with provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a part wall shall be shared by the owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use, subject however, to the right of any such owners to call for larger contribution from others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

#### ARTICLE XI - GENERAL PROVISIONS

Section 1. Enforcement. The Association, the Declarant or any owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, or any rule of the Association, including but not limited to any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants. Failure of the Association or any owner to enforce any covenant or restriction herein contained or any rule of the Association shall in no event be deemed a waiver of the right of the Association or any owner to do so thereafter. In the event action, with or without suit, is undertaken to enforce any provision hereof or any rule of the Association, the party against whom enforcement is sought shall pay to the Association or enforcing owner a reasonable attorney's fee. The Trustees may levy a fine or penalty not to exceed ten percent (10%) or the amount of the maximum annual assessment against any owner who fails to refrain from violation of these covenants or a rule of the Association, after three (3) days written notice.

Section 3. Duration. The covenants and restrictions of this declaration shall run with the land, and shall inure to the benefit of and be enforceable by the Association, or the owner of any unit subject to this Declaration, their respective legal representatives, heirs, successors, and assigns in perpetuity from the date this declaration is recorded.

Section 4. Amendment. The covenants and restrictions of the Declaration may be amended by an instrument signed by not less than sixty percent (60%) of the owners. Any amendment must be properly recorded in the records of Utah County, Utah, to become effective.

Section 5. Notices. Any notice required to be sent under the provisions of this Declaration shall be deemed to have been properly sent when deposited in the U. S. Mail, postpaid, to the last known address of the person who is entitled to receive it. Service of Process shall be initially received by Brent Christiansen. The Homeowners Association may appoint a successor Service of Process recipient.

Section 6. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men of women, shall in all cases be assumed as though in each case fully expressed.

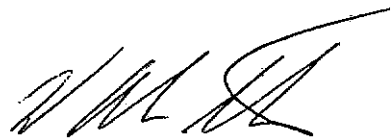
Section 7. Waivers. No provision contained in the Declaration shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violation which may occur.

Section 8. Topical Headings. The topical headings contained in the Declaration are for convenience only and do not define, limit or construe the contents of the Declaration.

Section 9. Utah Law. These declarations shall be governed by Utah Law. If any portion of this document is found to be not in accordance with State or Federal Law, only that portion of the document shall be affected and not the document as a whole.

Section 10. Assignment of Powers. Any and all rights and powers of Declarant herein contained may be delegated, transferred or assigned.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 7 day of Sept in the year 2001.



Earth and Image, LC, a Utah Limited Liability Company

DECLARANT

B&L Park Place, LC, a Utah Limited Liability Company

By: Brian [Signature]

By: Lauree Christensen

Irewood, LTD, a Utah Limited  
Liability Partnership

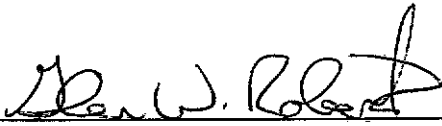
By: Woodhuff [Signature]

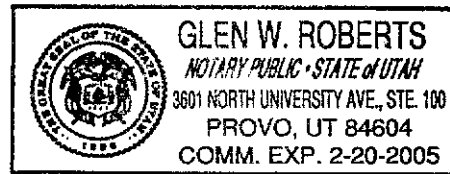
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NOTARY ACKNOWLEDGMENT

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County of Utah )

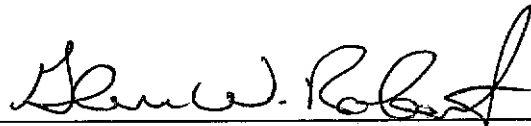
On this 7 day of September, 2001, personally appeared before me Brent Christiansen and Laurie Christiansen managers of B&L Park Place, LC., who duly acknowledged before me that they executed the above document.

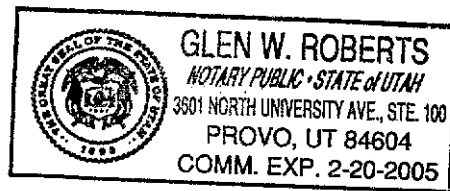
  
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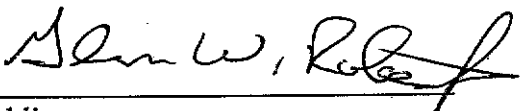
On this 7 day of September, 2001, personally appeared before me Woodruff Thomson, general partner of Irewood, LTD, who duly acknowledged before me that he executed the above document.

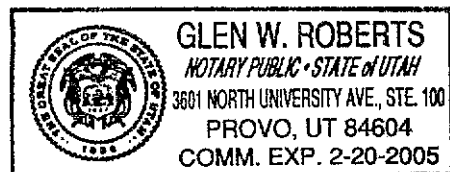
  
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Notary Public



State of Utah )  
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County of Utah )

On this 7 day of September, 2001, personally appeared before me Alan Woodruff Thomson, manager of Earth and Image, LC, who duly acknowledged before me that he executed the above document.

  
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Notary Public





**BYLAWS  
OF  
MORNING SIDE SUBDIVISION  
A PLANNED UNIT DEVELOPMENT**

**ARTICLE I --- APPLICABILITY**

Section 1: Ownership. The unit project is known as Morning Side Subdivision, a Planned Unit Development and is located in the City of Springville, Utah County, State of Utah.

Section 2: Applicability. The provisions of these Bylaws are applicable to the entire project. All present or future owners, tenants, or any other person that might use the facilities of the unit project in any manner are subject to the regulations set forth in these Bylaws. The mere acquisition or rental of any of the units of the project or the mere act of occupancy of any one of the units will signify that these Bylaws are accepted, ratified and will be complied with.

**ARTICLE II --- VOTING, MAJORITY, QUORUM, PROXIES**

Section 1: Voting. Voting shall be one vote per unit.

Section 2: Majority of Owners. As used in these Bylaws the term "majority of owners" shall mean those owners holding sixty percent (60%) of the votes.

Section 3: Quorum. Except as otherwise provided in these Bylaws, the presence in person or by proxy of a "majority of owners" as defined in the preceding paragraph of the Article shall constitute a Quorum.

Section 4: Proxies. Votes may be cast in person or by proxy. Proxies must be filed with the Secretary before the appointed time of each meeting.

**ARTICLE III --- ADMINISTRATION**

Section 1: Association Responsibilities. The owners of the units will constitute the Morning Side Home Owners Association hereinafter referred to as the Association, who will have the responsibility of approving the annual budget and special assessments as set forth in the Declaration, and election the members of the Board of Trustees who will administer the project, establish and collect monthly assessments and arrange for the operation, maintenance and management of the project on behalf of the Association.

Section 2: Place of Meetings. Meeting of the Association shall be held at such suitable place convenient to the owners as may be designated by the Board of Trustees.

Section 3: Annual Meetings. The first meeting of the Association shall be held within thirty (30) days of the sale of the \_\_\_\_\_ unit. Thereafter, the annual meetings shall be held on the second Thursday of January of each succeeding year or on such other date as determined by the Association. The owners may elect a Board of Trustees and transact such other business of the Association as may properly come before them.

Section 4: Special Meetings. It shall be the duty of the Chairman of the Board of Trustees to call a special meeting of the owners as directed by resolution of the Board of Trustees or on a petition signed by at least sixty percent (60%) of the owners and having been presented to the Secretary. No business shall be transacted at a special meeting except as stated in the notice unless by consent of sixty percent (60%) of the owners present, either in person or by proxy.

Section 5: Notice of Meetings. It shall be the duty of the Secretary to mail a notice of each annual or special meeting stating the purpose thereof as well as the time and place of the meeting, to each owner of record, at least five (5) but no more than fifteen (15) days prior to such meeting. The mailing of notice in the manner provided in this Section shall be considered notice served.

Section 6: Adjourned Meetings. If any meeting of owners cannot be organized because of a quorum has not been established, the owners who are present either in person or by proxy may adjourn the meeting to a time no less than forty-eight (48) hours from the time the original meeting was scheduled.

Section 7: Order of Business. The order of business at all Association meetings shall be as follows:

- a. Roll Call
- b. Proof of notice of meeting or waiver of notice
- c. reading of minutes of preceding meeting
- d. Reports of Trustees
- e. Appointment of election supervisors and vote counters
- f. Election of Trustees
- g. Unfinished Business
- h. New Business

#### ARTICLE IV --- BOARD OF TRUSTEES

Section 1: Number and Qualifications. The Association's affairs shall be governed by a Board of Trustees composed of three (3) members.

Section 2: Powers and Duties. The Board of Trustees shall have the powers and duties necessary for the administration of Association's affairs as set forth in the Declaration.

Section 3: Other Duties. In addition to duties imposed by there Bylaws, or by resolutions of the Association, the Board of Trustees shall be responsible for the following:

- a. Care, upkeep and surveillance of the common area
- b. Collection of monthly assessments from the owners
- c. Designation and dismissal of the personnel necessary for the maintenance and operation of the project, the common area, and the limited common area.

Section 4: Management Agent. The Board of Trustees may employ for the Association a management agent at a compensation established by the Board of Trustees to perform such duties and service as the Board of Trustees shall authorize.

Section 5: Election and Term of Office. At the first annual meeting of the Association the term of office of the trustees shall be fixed as follows: one for one (1) year one for two (2) years, and one for three (3) years. At the expiration of the initial term of office of each respective Trustee, his successor shall be elected to serve a term of three (3) years,. The Trustees shall hold office until their successors have been elected and hold their first meeting.

Section 6: Vacancies. Vacancies in the Board of Trustees caused by any reason other than the removal of a Trustee by a vote of the Association shall be filled by a vote of a quorum of the remaining Trustees, and each person so elected shall be a member until a successor is elected at the next annual meting of the Association.

Section 7: Removal of Trustees. At any regular or special meeting duly called, any one or more of the Trustees may be removed with or without cause by a majority of the owners, and a successor may then and there be elected to fill the vacancy thus created. Any Trustee whose removal has been proposed by the owners shall be given an opportunity to be heard at the meeting.

Section 8: Organization Meeting. The first meeting of the newly elected Board of Trustees shall be held within then (10) days of election at such place as shall be fixed by the owners at the meeting at which such Trustees were elected, and no notice shall be necessary to the newly elected Trustees in the order legally to constitute such meeting, provided a majority of the Board of Trustees shall be present.

Section 9: Regular Meetings. Regular meeting of the Board of Trustees may be held at such time and place as shall be determined from time to time, by a majority of the Trustees, but at least two (2) such meetings shall be held during each fiscal year. Notice of regular meetings of the Board of Trustees shall be given to each Trustee, personally or by mail or telephone at least three (3) days prior to the day named for such meeting.

Section 10: Special Meetings. Special meeting of the Board of Trustees may be called by the Chairman on three (3) days' notice to each Trustee, given personally, by mail or telephone, which notice shall state the time, place, and purpose of the meeting. Special meetings of the Board of Trustees shall be called by the Chairman or Secretary in like manner and on like notice on the written request of at least two (2) Trustees.

Section 11: Waiver of Notice. Before or at any meeting of the Board of Trustees may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Trustee at any meeting of the Board of Trustees shall be a waiver of notice by him of the time and place thereof. If all Trustees are present at any meeting of the Board of trustees, no notice shall be required and any business may be transacted at such meeting.

Section 12: Board of Trustees's Quorum. At all meetings of the Board of trustees, a majority of the Trustees shall constitute an quorum for the transaction of business, and the acts of the quorum shall be the acts of the Board of Trustees;. If, at any meeting of the Board of Trustees, there is less than a quorum present, the Trustees present may adjourn the meeting and the meeting shall automatically be held the following day at the same time. At any such meeting, any business that may have been transacted at the meeting as originally called may be transacted without further notice.

Section 13: Fidelity Bond Coverage. The securing of appropriate fidelity bond coverage is recommended for any person or entity handling the funds of the Association, including, but not limited to, employees of the professional managers. Such fidelity bonds should name the Association as an obligee, and be written in an amount equal to at least one hundred fifty percent (150%) of the estimated annual operating expenses of the project, including reserves.

## ARTICLE V --- OFFICERS

Section 1: Designation. The principle officers of the Association shall be a Chairman, Vice Chairman, Secretary and Treasurer, all of whom shall be elected by and from the Board of Trustees. The offices of Treasurer and Secretary may be filled by the same person.

Section 2: Election of Officers. The officers of the Association shall be elected annually by the Board of Trustees at the organization meeting of each new Board of Trustees and shall hold office at the pleasure of the Board of Trustees.

Section 3: Removal of Officers. On an affirmative vote of a majority of the members of the Board of Trustees, any officer may be removed, either with or without cause, and his successor elected at any regular meeting of the Board of Trustees or at any special meeting of the Board of Trustees called for such purpose.

Section 4: Chairman. The Chairman shall be the chief executive officer of the Association. He shall have all of the general powers and duties that are usually vested in the office of Chairman of an Association, including, but not limited to, the power to appoint committees from among the owners from time to time as he may in his discretion decide is appropriate to assist in the conduct of the Association's affairs.

Section 5: Vice Chairman. The Vice Chairman shall take the place of the Chairman and perform his duties whenever the Chairman shall be absent or unable to act. If neither the Chairman nor Vice Chairman is able to act, the Board of Trustees shall appoint some other Member of the Board of Trustees to do so on an interim basis. The Vice Chairman shall also perform such other duties as shall from time to time be imposed on him by the Board of Trustees.

Section 6: Secretary. The Secretary shall keep the minutes of all the meetings of the Board of Trustees and the minutes of all meetings of the Association. He shall have charge of such books and papers as the Board of Trustees may direct, and he shall, in general, perform all the duties incident to the office of Secretary.

Section 7: Treasurer: The Treasurer shall have the responsibility for Association funds and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. He shall be responsible for the deposit of all money and other valuable effects in the name, and to the credit of, the Association, in such depositories as may from time to time be designated by the Board of Trustees. All Association funds will be disbursed under approval of the Board of Trustees.

#### ARTICLE VI --- OBLIGATION OF OWNERS

Section 1: Assessments. All owners are obligated to pay monthly assessments imposed by the Board of Trustees to meet all project common expenses as set forth in the Declaration.

Section 2: Maintenance and Repair.

- a. Every owner must perform promptly all maintenance and repair work within his own unit which, if omitted, would affect the project in its entirety or in a part belonging to other owners.

- b. All the repairs of internal installations in a unit such as water, light, gas, power, sewage, telephones, air conditioning, sanitary installations, doors, windows, lamps, and all other accessories belonging to a unit shall be at the owner's expense.
- c. An owner shall reimburse the Board of Trustees for any expenditure incurred in repairing or replacing any common area damaged through his fault, and such expenditure shall become an assessment to the unit owner.
- d. Each unit owner is responsible for the interior maintenance of his unit.

Section 3: Use of Individual Units.

- a. All units shall be utilized for residential purposes only.
- b. An owner shall not make structural modifications or alterations in or to the outside of his unit except as provided in the Declaration.

Section 4: Use of Common Area.

The common area is available to owners and their guests on a first come first serve basis. Owners and guests using the common area are responsible for cleaning up any litter as a result of such use.

Section 5: Right of Entry.

- a. An owner shall grant the right of entry to the Board of Trustees or to any other person authorized by the Board of Trustees in case of emergency originating in or threatening his unit, whether the owner is present at the time or not.
- b. An owner shall permit authorized personnel, when so required, to enter his unit for the purpose of installing, altering, or repairing mechanical or electrical services, provided that the requests for such entry are made in advance and that such entry is at a time convenient to the owner. In case of emergency, such rights of entry shall be immediate.
- c. Throwing of garbage or trash outside of the installations provided for such disposal in the service area is prohibited.
- d. Additional rules are set forth in the Declaration.

ARTICLE VII --- METHOD OF AMENDING BYLAWS

These Bylaws may be amended by the Association in a duly constituted meeting for such purpose, and no amendment shall take effect unless approved by owners representing at least sixty percent (60%) of all units in the project.

ARTICLE VIII--- COMPLIANCE

These Bylaws are set forth to comply with the requirements of the Utah Code Annotated. In case there is any conflict between these Bylaws and the Utah code Annotated, the provisions of the Utah Code Annotated will supersede and apply. If there is any conflict between these Bylaws and the Declaration, the provisions of the Declaration will supersede and apply.

ADOPTED AND EXECUTED by the Declarant this 7 day of Sept. in the year 2001.

DECLARANT

Earth and Image, LC, a Utah Limited Liability Company

By: [Signature]

Irewood, LTD, a Utah Limited Liability Partnership

By: [Signature]

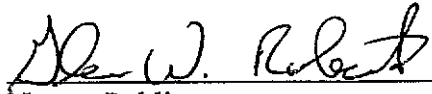
B&L Park Place, LC, a Utah Limited Liability Company

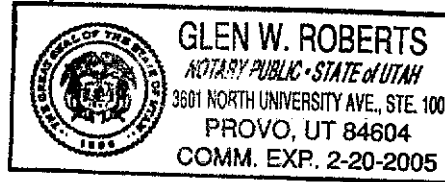
By: [Signature]  
Laune Christensen

NOTARY ACKNOWLEDGMENT

State of Utah )  
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County of Utah )


On this 7 day of September, 2001, personally appeared before me Brent Christiansen and Laurie Christiansen managers of B&L Park Place, LC., who duly acknowledged before me that they executed the above document.

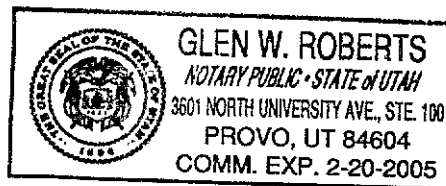
  
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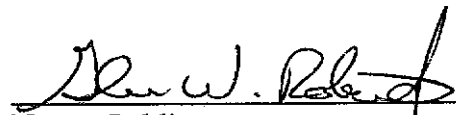
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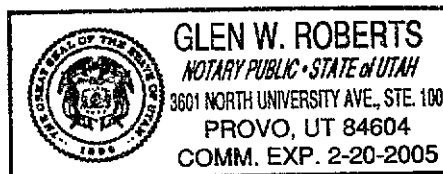
  
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State of Utah )  
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County of Utah )

On this 7 day of September, 2001, personally appeared before me Alan Woodruff Thomson, manager of Earth and Image, LC, who duly acknowledged before me that he executed the above document.

  
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Notary Public





64 11. RIGHT OF WAY

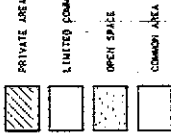
Beginning at a point on the eastern line of Spring Subdivision, First 42' north-south to South 111.12 feet and East 181.11 feet from the North 1/4 Section 36, Township 33N, Range 3E, Meridian 12W, South 58.52 feet to the southerly right of way line of 150 East Street thence North 30°41'05" East along said right of way line of said Spring Subdivision, thence North 21°44'19" East along said line 31.00 feet to the point of beginning.

**LOT TIE TABLE**

LOT	AREA	PERCENT	REMARKS
1	1.00	100.00	100%
2	1.00	100.00	100%
3	1.00	100.00	100%
4	1.00	100.00	100%
5	1.00	100.00	100%
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**LOT LOCATION COORDINATE TABLE**

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**STATE PLANE COORDINATE TABLE**

POINT	NORTHING	EASTING
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