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7773707
12/04/2000 04:23 PM 138.00
Book - 8405 Pg - 7994-8052
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**DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR THE
HIGHLAND POINTE VILLAGE PLANNED UNIT DEVELOPMENT**

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THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS for the HIGHLAND POINTE VILLAGE PLANNED UNIT DEVELOPMENT is made this 31 day of October, 2000, by the Declarant as follows:

RECITALS

A. HIGHLAND POINTE, L.C. (the "Declarant") is the owner of certain real property (the "Property") located in Salt Lake County, State of Utah as is particularly described in the plat map entitled "Highland Pointe Village P.U.D. and Amending Lot 9 of Fardown Estates Subdivision", recorded in the official records of the office of the County Recorder of Salt Lake County, State of Utah as Entry No. 7374224 on June 3, 1999, in Book 99-6P at Page 146 (the "Plat Map"), as follows:

Property Description

See Attachment A

The Plat Map shows nineteen (19) lots, numbered 1 through 19.

B. The Declarant intends, by recording this Declaration and the Plat Maps, to subject all of the Property to all of the covenants, conditions, restrictions, reservation of easements, liens and charges provided in this Declaration, those specified in the attached Bylaws and the laws of the State of Utah governing planned unit developments, which are for the benefit of and shall pass with the Property and each and every Lot and Dwelling Unit, and that shall apply to and bind the successors in interest, and any Owner thereof.

C. The Declarant deems it desirable, for the efficient preservation of the values and amenities in the Property and other real property which may be annexed to it pursuant to the provisions of this Declaration, to create a Utah non-profit corporation to which should be delegated and assigned the powers of owning, maintaining and administering the common areas, private roadways and certain other improvement in the Property and administering and enforcing these covenants, conditions and restrictions, and collecting and disbursing the assessments and charges hereinafter created.

D. The Declarant has caused said non-profit corporation, the members of which are or shall be the respective Owners of the Lots located on the Property, and Owners of the Lots located on any real property annexed pursuant to this Declaration, to be formed for the purpose of exercising the functions aforesaid.

E. The Declarant will develop and convey all of the Property pursuant to a general plan for all of the Property and subject to those certain protective covenants, conditions, restrictions, reservation of easements, equitable servitudes, liens and charges, all to run with the Property as set forth in this Declaration.

F. The Declarant may execute, acknowledge, and record a Supplemental Declaration affecting only a "phase", as that term is defined in this Declaration, so long as the Declarant owns all of the real property to be affected by such Supplemental Declaration.

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

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

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

ARTICLE I

Definition

Unless otherwise expressly provided, the following words and phrases when used in this Declaration shall have the following meanings:

Section 1. "**Architectural Committee**" means the committee created pursuant to Article IX below.

Section 2. "**Articles of Incorporation**" means the Articles of Incorporation of the Association which have been or will be filed with the Division of Corporations of the Department of Commerce of the State of Utah, as any amendment to such Articles.

Section 3. “**Association**” means the Highland Pointe Village Homeowners Association, Inc., a non-profit corporation, its successors and assigns, referred to in this Declaration.

Section 4. “**Beneficiary**” means a mortgagee under a mortgage or a beneficiary under a deed of trust, as the case may be, and the assignees of such mortgage or beneficiary.

Section 5. “**Board**” means the trustees of the Association who shall be elected in accordance with the By-Laws of the Association. The term “Members of the Governing Board” shall be synonymous with the term “Trustees” as used in the Utah Non-Profit Corporation and Co-operative Association Act.

Section 6. “**By-Laws**” means the By-laws of the Association, which have been or shall be adopted by the Board, as amended from time to time.

Section 7. “**Capital Improvement Assessment**” means a charge against each Owner and the Owner’s Dwelling Unit, representing a portion of the costs to the Association for the installation or construction of any improvements on any portion of the Common Area which the Association may from time to time authorize.

Section 8. “**Common Area**” or “**Common Areas**” shall mean all physical portions of the Project, except the Dwelling Units. Additional Common Area(s) may be transferred to the Association in the future pursuant to the terms of Article XV below. The Common Area(s) located within any future subdivision or portion thereof, shall be conveyed, lien free, to the Association prior to the sale of the first Dwelling Unit within any future subdivision, or portion thereof, to the public.

Declarant, in recording the Plat Map, has dedicated certain areas of the Property and improvements as Common Areas. Such areas are not dedicated for use by the general public, but are dedicated only to the common use and enjoyment of the Owners in the Highland Pointe Village P.U.D., as provided in this Declaration.

Section 9. “**Common Assessment**” means the charge against each Owner and the Owner’s Dwelling Unit, representing a portion of the total costs to the Association for maintaining, improving, repairing, replacing, managing and operating the Property, which charge is to be paid uniformly and equally by each Owner to the Association as provided herein.

Section 10. “**Common Expenses**” shall mean the actual and estimated costs of, maintenance, management, operation, repair and replacement of the Common Area including unpaid Special Assessments, Reconstruction Assessments and Capital Improvement Assessments, and those costs not paid by the Owner responsible for payment; costs of management and administration of the Association including but not limited to attorneys and other employees and consultants; the cost of all utilities, landscaping and other services benefiting the Common Area and all recreational

facilities thereon; the costs of fire, casualty and liability insurance covering the Property; and the cost of bonding of the Board of the Association; taxes paid by the Association; amounts levied against the Property, or portions thereof; snow removal and the cost of any other item or items determined by, or incurred by, the Association for any reason whatsoever in connection with the Property, for the benefit of all of the Owners, but shall not include water, sewer and power to an Owner's Dwelling Unit. The costs for water, sewer and power shall be borne by the Owner of the Dwelling Unit receiving the benefit of those utility services.

Section 11. “**Declarant**” means and refer to HIGHLAND POINTE, L.C., its successors and assigns, if Declarant assigns such rights of Declarant under this Declaration to any such successor and assignee by an express written assignment.

Section 12. “**Declaration**” means this instrument as it may be amended from time to time.

Section 13. “**Deed of Trust**” means and refer to a mortgage or a deed of trust, as the case may be.

Section 14. “**Dwelling Unit**” means and refers to a Lot located on the Property, as well as the building or structure located thereon, intended for independent use and occupancy as a residence by a single family, together with a percentage of undivided interest in the Common Area. It also includes mechanical equipment and appurtenances located within any one Dwelling Unit, or located without said Dwelling Unit, but designed to serve only one Unit, such as appliances, electrical receptacles and outlets, air conditioning compressors and other air conditioning apparatus, fixtures and the like.

Section 15. “**Family**” means (1) a group of natural persons related to each other by blood or legally related to each other by marriage or adoption, or (2) a group of not more than three (3) persons not so related, inclusive of their domestic servants, who maintain a common household in a Dwelling Unit.

Section 16. “**Improvement**” means all structures and appurtenances thereto of every type and kind, (and any alteration or addition thereto), including but not limited to buildings, out buildings, walkways, sidewalks, sprinkler pipes, garages, carports, roads, driveways, parking areas, recreational vehicle parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, planting trees and shrubs, poles, or signs.

Section 17. “**Maintenance Funds**” means the accounts created for receipts and disbursements of the Association, pursuant to Article VII of this Declaration.

Section 18. “**Manager**” means the person, firm, corporation or its agents retained or employed by the Declarant or the Association to manage, in whole or in part, functions by the Declarant.

Section 19. “**Member**” means any person or entity holding a membership in the Association as provided herein.

Section 20. “**Mortgage**” means any mortgage or Deed of Trust or other conveyance of a Dwelling Unit to secure the performance of an obligation, which will be void and reconveyed upon the completion of such performance. The term “Deed of Trust” or “Trust Deed” when used in this Declaration shall be synonymous with the term “Mortgage”.

Section 21. “**Mortgagee**” means a person or entity to whom a Mortgage is made and shall include the Beneficiary of a Deed of Trust.

Section 22. “**Mortgagor**” means a person or entity who mortgages his, her or its property to another (i.e., the maker of a Mortgage), and shall include the trustor of a Deed of Trust. The term Mortgagor shall be synonymous with the term “Trustor”.

Section 23. “**First Mortgagee**” means any lender which holds a mortgage or Trust Deed which constitutes a first and prior lien with respect to any other Mortgage or Trust Deed on the same real property. The term First Mortgagee will also include any beneficiary named in any such first and prior Trust Deed.

Section 24. “**Notice of Hearing**” means written notice of a hearing before a quorum of the Board, at which the Owner concerned shall have an opportunity to be heard in person or by counsel at the Owner’s expense.

Section 25. “**Owner**” means the person or persons or other legal entity or entities, including Declarant, holding fee simple interest of record to any Dwelling Unit, including buyers under executory contracts of sale, but excluding those having such interest merely as security for the performance of an obligation. For purposes of Article XI only, unless the context otherwise requires, Owner shall also include the family, invitees, licensees and lessees of any Owner.

Section 26. “**Person**” means a natural individual or any other entity with the legal right to hold title to real property.

Section 27. “**Plat Map**” means the Record of Survey Map of the Highland Pointe Village Planned Unit Development pertaining to the Project and recorded or to be recorded in the office of the Salt Lake County Recorder, State of Utah.

Section 28. “**Project**” means the Property, the Dwelling Units and all improvements thereon that are subject to this Declaration and the Plat Map.

Section 29. “**Property**” means and refers to all of the real property described in the Plat Map, together with such portion of the real property described in any additional exhibit to be attached thereto with respect to which a Notice of Addition of Property has been recorded subjecting it to this Declaration and to the jurisdiction of the Association as provided herein, and to all building, improvements and structures on such real property and all easements and rights and appurtenances belonging thereto.

Section 30. “**Reconstruction Assessment**” means a charge against each Owner and the Owner’s Dwelling Unit, representing a portion of the cost to the Association for reconstruction of any portion or portions of the improvements on the Common Area, pursuant to the provisions of this Declaration.

Section 31. “**Record, Recorded, Filed and Recordation**” means, with respect to any document, the recordation of such document in the Office of the Salt Lake County Recorder, State of Utah.

Section 32. “**Special Assessments**” means a charge against a particular Owner and the Owner’s Dwelling Unit directly attributable to the Owner, equal to the cost incurred by the Association for corrective action performed pursuant to the provisions of this Declaration, plus interest thereon as provided in this Declaration.

Section 33. “**Supplemental Declaration**” means any declaration of covenants, conditions and restrictions which may be recorded by Declarant pursuant to Article XV of this Declaration.

Section 34. “**Transfer Assessment**” means a charge against a particular new Owner, and the Owner’s Dwelling Unit, to cover the cost to the Association of effectuating a transfer of membership upon the books of the Association, in an amount as set forth in Section 2 of Article IV of this Declaration.

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

ARTICLE II

Submission and Division of Project

Section 1. **Submission to Covenants, Conditions and Restrictions of Declaration.** The Declarant submits the Property, the Dwelling Units and all other improvements

now or hereafter made in and to the Property to the covenants, conditions and restrictions in this Declaration. All of the foregoing is and shall be held, conveyed, hypothecated, encumbered, leased, rented and improved as a fee simple, integrated Planned Unit Development ("PUD") to be known as the Highland Pointe Village Planned Unit Development. All of the Property, the Dwelling Units and the improvements, shall be subject to the covenants, conditions, restrictions, uses, limitations and obligations set forth herein, each and all of which are declared and agreed to be for the benefit of the Project and in furtherance of a plan for improvement of the Property and division thereof into planned units. Each and all of the provisions of this Declaration shall be deemed to run with the land and shall be a burden and a benefit to the Declarant, the Declarant's successors and assigns, and to any person acquiring, renting, leasing or owning an interest in the real property and improvements comprising the Project, and to their respective heirs, person representatives, successors and assigns.

Section 2. Division into Dwelling Units. The Project is divided into Dwelling Units and each Dwelling Unit consists of a Lot, and any building or structure located thereon, as shown on the Plat Map.

ARTICLE III **Owner's Property Rights and Responsibilities**

Section 1. Owner's Percentage Interest, Easements of Enjoyment. Each Dwelling Unit shall include an equal undivided interest in the Common Areas and facilities. Each Owner shall have a right and easement of ingress and egress and of enjoyment in, to and over the Common Area, which shall be appurtenant to and shall pass with title to the Dwelling Unit, subject to the following provisions:

- (a) The right of Declarant to annex additional Common Areas thereto pursuant to the terms of Article XV of this Declaration.
- (b) The right of the Association to reasonably limit the number of guests of Owners using the Common Area facilities.
- (c) The right of the Association to establish uniform rules and regulations pertaining to the use of the Common Areas and any recreational facilities thereof, including but not limited to, the right and obligation of the Association to enforce all parking restrictions within the Common Areas as set forth in Section 3 of this Article III.
- (d) The right of the Association to charge uniform and reasonable admission and other fees for the use of the recreational facilities, if any, situated upon a portion of the Common area; provided, however, that none of the Common Area facilities, recreational facilities, parking spaces or other amenities in the Property shall be leased to the Owners or any other parties.

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

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

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

(h) The right of the Declarant (and its sales agents, customers and representatives) to the nonexclusive use of the Common Area and the facilities thereof, without charge, for sales, display, access, ingress, egress and exhibit purposes, which right the Declarant hereby reserves; provided, however, that such use shall not be for a period of more than ten (10) years after the date of recording this Declaration. Upon the request of the Declarant and upon the vote of fifty-one percent (51%) of the Class A Members of the Association, this term may be extended for an additional period of time.

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

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

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

Section 3. Common Area Parking. Temporary guest or recreational parking, if any, shall be permitted within the Common Area only within spaces and areas clearly marked for this purpose. Spaces shall be shown by signs or markings on the paved area. The Association through its officers, committees and agents, is hereby empowered to establish "parking" and "no parking" areas within the Common Area, as well as to enforce such parking limitations by all means lawful for such enforcement, including the removal of any violating vehicle by those empowered. Provided, however, no curbside parking shall be allowed within ten (10) feet of a fire hydrant and the portion of the curb within such restricted area shall be marked as a no-parking zone in red paint.

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

Section 5. Waiver of Use. No Owner may exempt himself from personal liability for assessments duly levied by the Association, nor release the Dwelling Unit or other property owned by him, from the liens and charges thereof, by waiver of the use and enjoyment of the Common Area and the facilities thereon, or by abandonment of the Owner's Dwelling Unit or any other property in the Property.

Section 6. Taxes. Each Owner shall execute such instrument and take such action as may reasonably be specified by the Association to obtain a separate real estate tax assessment of each Dwelling Unit. If any taxes or assessments may, in the opinion of the Association, nevertheless be a lien on more than one Dwelling Unit not under common ownership, or any part thereof, they may be paid by the Association and each owner shall be obligated to pay or to reimburse the Association for, as the case may be, the taxes and assessments assessed by the County Assessor or other taxing authority against his own Dwelling Unit and interest, if any, in the Common Area.

Section 7. Dwelling Unit Maintenance Obligations. Subject only to the duty of the Association to provide for maintenance as provided in Article VI of this Declaration, it shall be the duty of each Owner, at the Owner's sole cost and expense, subject to the provisions of this Declaration regarding Board approval, to maintain, repair, replace and restore areas subject to the Owner's exclusive control, in a neat, sanitary and attractive condition. Areas subject to the exclusive control of the Owner shall be deemed to include, but not be limited to, the interiors and exteriors of

the Dwelling Unit. In the event that any Owner shall permit any improvement which is the responsibility of such Owner to maintain, to fall into disrepair or not to be so maintained as to create a dangerous, unsafe, unsightly or unattractive condition, or to otherwise violate this Declaration, the Board shall have the right, but not the duty, upon fifteen (15) days' prior written notice to the Owner of such Dwelling Unit, to correct such condition and to enter upon such Owner's Dwelling Unit to make such repairs or to perform such maintenance and the cost thereof shall be charged to the Owner. Said costs shall be a special Assessment and shall create a lien enforceable in the manner provided for other assessments as specified in this Declaration, the Owner shall promptly pay all amounts due for such work and the costs and expenses of collection may be added, at the option of the Board, to the amounts payable by each Owner as Assessments. All replacement materials must receive prior written approval of the Board.

Section 8. Use of Swimming Pool and Facilities. Each Member shall be entitled to reserve the swimming pool located on the Common Area in accordance with regulations adopted by the Board from time to time, provided that no Member may reserve the swimming pool and its facilities on a legal holiday for more than three (3) consecutive hours.

ARTICLE IV **Membership in Association**

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

Section 2. Transfer. The Association Membership held by any Owner of a Dwelling Unit shall not be transferred, pledged or alienated in any way, except upon the sale or encumbrance of such Dwelling Unit, and then only to the purchaser or Mortgagee of such Dwelling Unit. Any attempt to make a prohibited transfer is void, and will not be reflected upon the books and records of the association. A Class A Member who has sold the Owner's Dwelling Unit to a contract purchaser under an agreement to purchase such Membership, shall be entitled to assign to such contract purchaser his right of enjoyment of the Common Areas and such Member's voting proxy rights in the Association, but as between the Association and such Member, the Member may not delegate his Membership obligations. Such assignment and/or proxy shall be in writing and shall be delivered to the Board before such contract purchaser may use the Common Area and facilities or vote, as the case may be. The contract seller shall remain liable for all charges and assessments attributable in the Owner's Dwelling Unit until fee simple title to the Dwelling Unit sold is conveyed. In the event the Owner of any Dwelling Unit shall fail or refuse to transfer the Membership registered in his name to the purchaser of such Dwelling Unit upon transfer of fee simple title thereto, the Board shall have the right to record the transfer upon the books of the Association. Upon any transfer, pledge, or alienation of a Dwelling Unit, the Board shall have the right to charge a Transfer Assessment against any new Owner, and the Owner's Dwelling Unit, equal

in amount to two (2) times the current monthly Common Assessment, to cover the cost to the Association of effectuating any such transfer of Membership upon the books of the Association and to perpetuate the reserve funds of the Association.

ARTICLE V
Voting Rights

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

Class A. Class A Members shall originally be all Owners, with the exception of the Declarant, for so long as there exists a Class B Membership. Class A Members shall be entitled to one (1) vote for each Dwelling Unit owned. The Declarant shall become a Class A Member with regard to Dwelling Units owned by the Declarant upon conversion of Declarant's Class B Memberships as provided below. When more than one person holds an interest in any Dwelling Unit, all such persons shall be Members. The vote for such Dwelling Unit shall be exercised in accordance with Article V, Section 2 of this Declaration and in no event shall more than one (1) vote be cast with respect to any Dwelling Unit owned by Class A Members.

Class B. The Class B Member shall be the Declarant and it shall be entitled to a total of three (3) votes for each Dwelling Unit owned by the Declarant. The Class B Membership shall cease and be converted to Class A Membership on the happening of any of the following events, whichever occurs earliest:

- (a) When the total votes outstanding in the Class A Memberships equals the total votes outstanding in the Class B Memberships;
- (b) Ten (10) years from the date of recording this Declaration; or
- (c) On voluntary cancellation of Class B Membership by the Declarant.

Section 2. Vote Distribution. Class A Members shall be entitled to one (1) vote for each Dwelling Unit in which they hold the interest required for Membership. The class B Member shall be entitled to three (3) votes for each Dwelling Unit in which it holds an interest required for the Membership. When more than one person holds such interest or interest in any Dwelling Unit, (a "co-owner"), all such co-owners shall be members and may attend any meeting of the Association, but only one such co-owner shall be entitled to exercise the vote (or votes in the case of the Class B Member) to which the Dwelling Unit is entitled. Such co-owners may from time to time designate in writing one of their number to vote. Fractional votes shall not be allowed, and

the Class A Member's and Class B Member's vote (or votes in the case of the Class B Member) for each Dwelling Unit shall be exercised, if at all, as a unit. When no voting co-owner is designated or if such designation has been revoked, the vote for such Dwelling Unit shall be exercised as the majority of the co-owners of the Dwelling Unit mutually agree. Unless the Board receives a written objection from a co-owner. It shall be presumed that the corresponding voting co-owner is acting with the consent of his or her co-owners. No vote shall be cause for any Dwelling Unit where the majority of the co-owners present in person or by proxy and representing such Dwelling Unit cannot agree to said vote or other action. The non-voting co-owner of co-owner shall be jointly and severally responsible for all of the obligations imposed upon the jointly owned Dwelling Unit and shall be entitled to all other benefits of ownership. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established herein, or by the By-Laws of the Association, shall be deemed to be binding on all Owners, their successors and assigns. Said voting rights shall be subject to the restrictions and limitations provided in the Declaration and in the Articles of Incorporation and By-Laws of the Association.

ARTICLE VI
Duties and Powers of Association

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

- (a) Maintain, repair and otherwise manage the Common Areas and all facilities located thereon, and replace those elements of such areas that must be replaced on a periodic basis, including but not limited to the improvements and landscaping thereon, in accordance with the provisions of Article VII of this Declaration.
- (b) Maintain all private roads, all sidewalks and all parking areas within the Common Area only, including clearing, snow removal and periodic resurfacing.
- (c) Grant easements, rights of way, or strips of land where necessary, for utilities and sewer facilities over the Common Areas to serve those areas and the Dwelling Units.
- (d) Maintain such policy or policies of insurance as may be permitted or allowed in this Declaration and the By-laws.
- (f) Subject to the Declarant's appointment of Eagle Pointe Realty and Management, Inc. ("Eagle Pointe") as the initial Manager to perform the duties and responsibilities of the Association for a term of not more than three (3) years for its customary fee, the Association shall have the power and authority to employ or contract with a professional manager to perform all or any part of the duties and responsibilities of the Association, and to delegate its powers to committees, officers and employees as permitted by law. Any such agreement with or employment by the Association shall be for a term not to exceed three (3) years, subject to cancellation by either party without cause or payment of

a termination fee, upon ninety (90) days written notice. A nonprofessional manager may be designated only upon the affirmative vote of seventy-five percent (75%) of the Members. The term of a Manager may be renewed by the Association, if it deems a renewal term to be appropriate.

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

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

(i) Maintain and repair all landscaping in the Common Areas.

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

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

ARTICLE VII

Covenant to Pay Maintenance Assessments

Section 1. Creation of Lien and Personal Obligation to Pay Assessments.

Declarant, for each Dwelling Unit owned by it, hereby covenants, and each Owner of any Dwelling Unit by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association (1) annual Assessments made by the Board for the purposes provided in this Declaration, (2) annual Common Assessments for Common Expenses, (3) Capital Improvement Assessments, (4) Special Assessments, (5) Reconstruction Assessments, and (6) Transfer Assessments, such assessments to be established and collected as provided in this Declaration. Such assessments, together with interest, costs, and reasonable attorney's fees for the collection thereof, shall be a charge on the Dwelling Units and shall be a continuing lien upon the Dwelling Unit against which such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Dwelling Unit at the time when the Assessment fell due. Subject to the provisions of this Declaration protecting First Mortgagees, the personal obligation for delinquent assessments shall pass to the successors in interest of such Owner. The Board shall establish at least two (2) separate accounts (the "Maintenance Funds") into which shall be deposited all monies paid to the Association. At least one of the accounts (the "Operating Fund") shall include funds for replacement, painting, repairs and operations which would reasonably be expected to occur on an annual or more frequent basis. At least one of the accounts (the "Reserve Fund") shall include such funds as the Board determines shall constitute an adequate and reasonable reserve for replacement

and repairs which would reasonably be expected to occur less frequently than on an annual basis. The Board shall not co-mingle any amounts deposited into any of the separate accounts.

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

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

Section 4. Basis of Maximum Common Assessment. Until January 1st of the year immediately following the conveyance of the first Dwelling Unit to any Owner, the maximum Common Assessment under Article VII shall be established by the Board and shall be disclosed to each prospective purchaser of a Dwelling Unit before the closing of the sale occurs.

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

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

Section 5. Capital Improvement and Reconstruction Assessments. In addition to any Common Assessments, the Board may levy, in any assessment year, a Capital Improvement assessment or Reconstruction Assessment applicable to the year only, for the Purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement or other such addition upon the Property, including fixtures and personal property related thereto; provided that the total of any such assessment which is in excess of Two Thousand dollars (\$2,000.00) annually shall require the vote or written assent of fifty-one percent (51%) of each class of Members of the Association who are in attendance at a meeting at which there is a quorum present and which meeting was called for the purpose of dealing with such assessments.

Section 6. Notice and Quorum for any Action Authorized Under Section 4 and 5. Written notice of any meeting called for the purpose of taking any action by the Members authorized under Sections 4 and 5 above shall be sent to all Members not less than thirty (30) days, nor more than sixty (60) days, in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast fifty-one percent (51%) of all votes of each class of Membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be twenty-five percent (25%) of the voting power of the Association. No such subsequent meeting shall be held more than thirty (30) days following the preceding meeting.

Section 7. Equal Rate of Assessment. Common assessments, Capital Improvement Assessments and Reconstruction Assessments provided for in this Article VII must be fixed at an equal rate for all Dwelling Units; provided however, that the Association may, subject to the provisions of Section 3 of this Article, levy Special Assessments against particular owners who have caused the Association to incur special expenses due to willful or negligent acts of said Owners, their quests or agents. All Common Assessments shall be collected on a regular monthly basis by the Board.

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

Association as to the status of assessments against a Dwelling Unit shall be binding upon the Association as of the date of its issuance.

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

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

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

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

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

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

Section 10. One-Time Special Assessment. The initial Owner or Owners of a Dwelling Unit other than the Declarant shall pay a one-time special assessment of One Thousand Dollars (\$1,000.00). Subsequent Owners shall not be obligated to pay this special assessment. This special assessment shall be paid at the closing of the purchase of a Dwelling Unit.

ARTICLE VIII

Effect of Non-Payment of Assessments Remedies of the Association

Section 1. Effect of Non-Payment of Assessments; Remedies of the Association. Any installment of a common Assessment, Capital Improvement Assessment, Special Assessment or Reconstruction Assessment not paid within thirty (30) days after the due date shall bear interest from the due date of such installment at the rate of eighteen percent (18%) per annum. If any installment of an assessment is not paid within thirty (30) days after it is due, the Owner responsible therefore may be required further by the Board to pay a late charge of Five Dollars (\$5.00) or five percent (5%) of the amount of the delinquent installment, whichever is greater. The association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Dwelling Unit. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of the Owner's Dwelling Unit. If any installment of a Common Assessment is not paid within thirty (30) days after its due date, the Board shall mail an acceleration notice to the Owner and to each First Mortgagee of a Dwelling Unit which has requested a copy of the notice. The notice shall specify (1) the fact that the installment is delinquent, (2) the action required to cure the default, (3) a date, not less than thirty (30) days from the date the notice is mailed to the Owner, by which such default must be cured, and (4) that failure to cure the default on or before the date specified in the notice may result in acceleration before the date specified in the notice may result in acceleration of the balance of the installments of the Common Assessment for the balance of the installments of the Common Assessment for the current fiscal year and the sale of the Dwelling Unit. The notice shall further inform the Owner of his right to cure after acceleration and to bring a court action to assert the non-existence of a default or any other defense of the Owner to acceleration and sale. If the delinquent installments of Common Assessments and any charges thereon are not paid in full on or before the date specified in the notice, the Board, at its option, may declare all of the unpaid balance of the annual Common Assessment to be immediately due and payable without further demand and may enforce the collection of the full Common Assessment and all charges thereon in any manner authorized by law and this Declaration.

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

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

Section 4. Curing of Default. Upon the timely curing of any default with respect to which a Notice of Assessment was filed by the Association, the officers thereof shall record an appropriate Release of Lien, upon payment by the defaulting Owner of a fee, to be determined by the Association, but not to exceed Two Hundred Dollars (\$200.00), to cover the costs of preparing and recording such release. A certificate executed and acknowledged by any two (2) Members of the Board stating the indebtedness secured by the lien upon any Dwelling Unit created hereunder shall be conclusive upon the Association and the Owners as to the amount of such indebtedness as of the date of the certificate, in favor of all persons who rely thereon in good faith. Such certificate shall be furnished to any Owner upon request at a reasonable fee, not to exceed Fifty Dollars (\$50.00).

Section 5. Cumulative Remedies. The assessment liens and the rights to foreclosure and sale thereunder, shall be in addition to and not in substitution for, all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid assessments, as above provided.

Section 6. Subordination of the Lien to First Mortgage. The lien of assessment provided for herein shall be subordinate to the lien of any first Mortgage (meaning any recorded Mortgage with first priority or seniority over other Mortgages) made in good faith and for value and recorded prior to the date on which the assessment came due. Sale or transfer of any Dwelling Unit shall not affect the assessment lien. The sale or transfer of any Dwelling Unit pursuant to the Mortgage foreclosure of first mortgage or deed in lieu thereof shall extinguish the

lien of such assessments as to the installments which became due prior to such sale or transfer. No sale or transfer shall relieve the Owner from personal liability for such assessment, nor such Dwelling Unit from liability for any installments or assessments thereafter becoming due or from the lien thereof.

ARTICLE IX
Architectural Control

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

Section 2. Review of Proposed Construction. No building, fence, wall, deck, patio cover or other structure shall be commenced, painted, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and color and location in relation to surrounding structures and topography by the Architectural committee. The Architectural Committee shall approve proposals or plans and specifications submitted for its approval only if it deems that the construction, alterations or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of the surrounding area of the Property as a whole, that the appearance of any structure affected thereby will be in harmony with the surrounding structures, and that the upkeep and maintenance thereof will not become a burden on the Association. The Architectural Committee may condition its approval of proposals or plans and specifications on such changes therein as it deems appropriate, or upon the agreement by the Owner submitting the same to grant appropriate easements to the Association for the purpose of maintenance, and may require submission of additional plans and specifications or other information and agreements prior to approving or disapproving material submitted. The Architectural Committee may also issue rules or guidelines setting forth procedures for the submissions of plans for approval, requiring a fee payable to the Association to accompany each application for approval, or additional factors which it will take into consideration in reviewing submissions. The Architectural Committee may provide that the amount of such fee shall be uniform, or that it shall be determined in any other reasonable manner, such as by the reasonable costs of the construction, alterations or additions contemplated, provide that in no event shall such fee exceed Two Hundred dollars (\$200.00). The Architectural committee may require such detail in plans and specifications submitted for its review as it deems proper, including, without limitation, floor plans, site plans, drainage plans, elevation drawings and descriptions or samples of exterior materials and colors. Until receipt by the

Architectural Committee of any required plans and specifications, the Architectural Committee may postpone review of any plans submitted for approval.

Section 3. Construction Requirements. Notwithstanding any other provisions of this Article IX, the exterior of any building or structure on a Lot must be comprised of not less than fifty percent (50%) brick and the soffit and fascia must be lined with crown molding as approved by the Architectural Committee.

Each Owner, no later than sixty (60) days following the closing of the Owner's purchase of a Lot, must submit to the Architectural Committee for approval, plans, specifications and drawings for the construction of the building or structure to be used as the Owner's residence. The plans, specifications and drawings must be prepared by qualified professionals.

Section 4. Meeting of the Architectural Committee. The Architectural Committee shall meet from time to time as necessary to perform its duties hereunder. The Architectural Committee may from time to time, by resolution unanimously adopted in writing, designate a Committee Representative (who may, but need not be, one of its members) to take any action or perform any duties for and on behalf of the Architectural Committee, except the granting of a variance pursuant to Section 8 of this Article IX. In the absence of such designation, the vote of any two (2) Members of the Committee taken without a meeting, shall constitute an act of the Committee.

Section 5. No Waiver of Future Approvals. The approval of the Architectural Committee of any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval and consent of the Architectural Committee shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matter whatever subsequently or additionally submitted for approval or consent.

Section 6. Compensation for Members. The members of the Architectural Committee shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of their duties hereunder.

Section 7. Inspection of Improvement. Inspection of any Improvement and the correction of defects therein shall proceed as follows:

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

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

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

(d) If for any reason the Architectural Committee fails to notify the Owner of any noncompliance within sixty (60) days after receipt of said written notice of completion from the Owner, the Improvement shall be deemed to be in accordance with said approved plans

Section 8. Non-Liability of Architectural Committee Members. Neither the Architectural Committee nor any member thereof, nor its duly authorized Committee Representative, shall be liable to the Association or to any Owner for any loss, damage or injury arising out of or in any way connected with the performance of the Architectural Committee's duties hereunder, unless due to the willful misconduct or bad faith of the Architectural Committee. The Architectural Committee shall review and approve or disapprove all plans submitted to it for any proposed Improvement, solely on the basis of aesthetic consideration and the overall benefit or detriment which would result to the immediate vicinity and the Property generally. The Architectural Committee shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing, nor shall its approval of , any plan or design from the standpoint of structural safety or conformance with building or other codes, excepting that the Architectural Committee hereby waives the non-liability provision of this paragraph to the extent necessary to obtain insurance as provided for in Article XIII hereof.

Section 9. Variances. The Architectural Committee may authorize variances from compliance with any of the architectural provisions of this Declaration or any Supplemental Declaration or any Supplemental Declaration, including restrictions upon height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration may require. Such variances must be evidenced in writing, must be signed by at least two (2) members of the Board of adjustment of Salt Lake County, State of Utah. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration or any Supplemental Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The terms and provisions of this Declaration or any Supplement Declaration for any purpose except as to the particular portion of the Property and particular provisions hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting misuse of the premises, including, but not limited to, zoning ordinances and Dwelling Unit set-back lines or requirements imposed by any governmental or municipal authority.

ARTICLE X
Maintenance and Repair Obligation

Section 1. Maintenance Obligations of Owners. Subject to the duty of the Association to provide for maintenance as provided in Section 2 of this Article X, it shall be the duty of each Owner, at the Owner's sole cost and expense, subject to the provisions of this Declaration regarding Architectural Committee approval, to maintain, repair, replace and restore areas of the Property which have been transferred and conveyed to the Owner, including but not limited to, the interior and exterior (including the roof) of the Dwelling Unit, its structure, the property on which it is located and any improvements to the Dwelling Unit or located thereon (collectively, the "Improvements") in a neat, sanitary, attractive and structurally sound condition. In addition to the maintenance and repairs set forth above, the Owner shall be responsible for the necessary landscaping, gardening, yard care of and snow removal from the Owner's Dwelling Unit. In the event that any Owner shall permit any Improvements which are the responsibility of such Owner to maintain, to fall into disrepair or fail to so maintain such Improvements so as to create a dangerous, unsafe, unsightly or unattractive condition, or to otherwise violate this Declaration, the Owner shall, upon five (5) days written notice, immediately undertake such action as is necessary to correct such condition. Further, the Architectural Committee shall have the right, but not the duty, upon fifteen (15) days prior notice to the Owner of such Dwelling Unit, to correct such condition and to enter upon such Owner's Dwelling Unit to make such repairs or to perform such maintenance and the costs shall constitute a Special Assessment and shall create a lien enforceable in the same manner as other assessments as set forth in this Declaration. The Owner shall pay promptly all amounts due for such work, and the costs and expenses of collection may be added, at the option of the Board, to the amounts payable by each Owner as Common Assessments.

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

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

Section 4. Variance in exterior Appearance and Design. Any Owner who has suffered damage may apply for approval to the Architectural Committee for reconstruction, rebuilding or repair of his Dwelling Unit in a manner which will provide for an exterior appearance and design different from that which existed prior to the date of the casualty. Application for such approval shall be made in writing together with full and complete plans and specifications, working drawings and elevations showing the proposed reconstructions and the end result thereof. The Architectural Committee shall grant such approval only if the design proposed by the Owner shall result in a finished Dwelling Unit in harmony with the exterior design of other Dwelling Units on the Property. Failure of the Architectural Committee to act within thirty (30) days after receipt of such a request in writing coupled with the drawings and Dwelling Unit plans showing the full and complete nature of the proposed changes shall constitute approval thereof. If the obligation for repair falls upon the Association, Architectural Committee approval will not be required prior to the commencement of such work.

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

Section 6. Party Walls.

(a) Each wall, if built as a part of the original construction of a Dwelling Unit and is located between Dwelling Units, shall constitute a party wall and, to the extent not inconsistent with the provisions of this Article, the general rule of law regarding party walls and liability for property damage due to negligence or wilful acts or omissions shall apply.

(b) The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the party wall in proportion to such use.

(c) 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 without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or wilful acts or omissions.

(d) Notwithstanding any other provision of this Article, an Owner, who by the Owner's negligent or wilful act causes the party wall to be exposed to the elements, shall bear the whole cost of furnishing the necessary protection against such elements.

(e) 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 successor in title.

ARTICLE XI **Use Restrictions**

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

Section 1. Single family Residences, Business or Commercial Activity. Each Dwelling Unit shall be used as residence for a single family. No part of the Property shall ever be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending or other such non-residential purpose without the vote of seventy-five percent (75%) of the votes eligible to be cast by Members of the Association. Provided, further, however, the Association shall never be permitted to allow more than twenty-five percent (25%) of the Dwelling Units to be used as a non-owner occupied residence. Notwithstanding any provisions herein to the contrary, nothing herein shall be construed as prohibiting the Declarant, its successors and assigns, from using any portion of the property for a model home site, and display and sales office during the construction and sales period in accordance with Article III Section 1 (h), of this Declaration.

Section 2. Nuisance. No noxious or offensive activity (including but not limited to the repair of motor vehicles) shall be carried on, in or upon any Dwelling Unit or the Common Area, nor shall anything be done thereon which may be or become an unreasonable annoyance or nuisance to any other Owner. No loud noises or noxious odors shall be permitted on the Property, and the Board shall have the right to determine in accordance with the By-laws if any noise, odor or activity producing such noises, odor or interference constitutes a nuisance. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other

sound devices other than security devices used exclusively for security purposes), noisy or smokey vehicles, large power equipment or large power tools, unlicensed off-road motor vehicles, or items which may unreasonably interfere with television or radio reception of any Owner in the Property, shall be located, used or placed on any portion of the Property, or exposed to the view of other Owners without the prior written approval of the Architectural Committee.

Section 3. Signs. No sign, poster, display, billboard or other advertising device of any kind shall be displayed to the public view on any portion of the Property or any Dwelling Unit, without the prior written consent of the Architectural Committee, except one sign for each Dwelling Unit, of not more than three (3) feet by two (2) feet, plain white with black block letters, advertising the Dwelling Unit for sale or rent, or except signs, regardless of size, used by Declarant, their successors or assigns, to advertise the Property during the construction and sale period. All signs or billboards and the regulations promulgated for the regulation thereof shall conform to the requirements of the Salt Lake County, State of Utah ordinances.

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

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

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

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

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

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

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

Section 6. Pets and Other Animals. No structure or building of any type shall be constructed, kept, maintained or permitted for the purposes of housing any livestock, animals or reptiles at any place within the limits of the Property; provided, however, that each Owner may keep and maintain two (2) common household pets, unless otherwise provided by the affirmative vote of seventy-five percent (75%) of the Members.

Section 7. Parking. No overnight parking of any Member's vehicle shall be permitted on the Common Area, except in the garage of the Member's Dwelling Unit or in the driveway areas located in front of and to the side of a Dwelling Unit and provided that;

(a) No more than two (2) passenger vehicles, in working order and legal for use on public streets, shall be parked overnight in the driveway areas;

(b) No part of any such vehicle parked in a driveway area overnight shall extend so as to cover or protrude into any part of the sidewalk; curbing or planted portion of the Common Area; and,

(c) No such vehicle shall be so parked unless the garage of the Dwelling Unit served by the driveway area is first used for parking to the extent of its designed capacity for parking.

In addition, no recreational vehicle shall be parked for longer than thirty (30) minutes on the Common Area, except in a garage or in a driveway area at least six (6) feet behind the front of any Dwelling Unit.

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

Section 9. Front Window Treatment. No blinds, draperies, or other window coverings or treatments shall be permitted with respect to Dwelling Unit window which face any road, whether public or private, except those which are conservative in style and neutral in color or otherwise approved by the Architectural Committee.

ARTICLE XII
Damage or Destruction to Common Area

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

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

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

(c) Each Owner shall be liable to the Association for any damage to the Common Area not fully covered by insurance which may be sustained by reason of the negligence or willful misconduct of said Owner or of his family and guests, including minors and adults. Notwithstanding the foregoing, the Association reserves the right to charge a Special Assessment equal to the increase, if any, in the insurance premium directly attributable to the damage caused by such Owner. In the case of joint ownership of a Dwelling Unit, the liability of such Owners shall be joint and several, except to the extent that the Association has previously contracted in writing with such joint Owners to the contrary. The cost of correcting such damage shall also be a Special Assessment against the Dwelling Unit owned by Owner.

ARTICLE XIII
Insurance

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

Section 2. Insurance Obligations of Owners. Each Owner shall insure his entire Dwelling Unit, including the structural portions of the Dwelling Unit against loss or damage by fire or by any other casualty, under the standard form of extended endorsement and broad form now in use in the State of Utah or under such other insurance as may be required by a Mortgagee of the Dwelling Unit. All such insurance shall be for the full replacement value with automatic inflation coverage. All such policies shall contain a provision that the same shall not be canceled or terminated except upon at least thirty (30) days written notice to the Association.

Section 3. Replacement or Repair of Property. In the event of damage to or destruction of any part of the Common Area, or any Improvement thereon or any other portion of the Property insured by the Association, the Association shall repair or replace the same from the insurance proceeds available, subject to the provisions of Article XII of this Declaration. If such insurance proceeds are insufficient to cover the costs of such repair or replacement of the property damaged or destroyed, the Association may make a Reconstruction Assessment against all Dwelling Unit Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other common Assessment made against such Dwelling Unit Owners, in accordance with the provisions of Article VII, Section 5, of the Declaration. In the event of total destruction of all of the Improvements on the property the proceeds of the insurance carried by the Association shall be divided equally among the Dwelling Unit Owners, provided that the balance then due on any valid encumbrance of record shall be first paid in order of priority, before the distribution of any proceeds to an Owner whose Dwelling Unit is so encumbered.

Section 4. Waiver of Subrogation. As to each policy of insurance maintained by the Association, which will not be voided or impaired thereby, the Association hereby waives and releases all claims against the Board, the Owners, the Manager, the Declarant, and the agents and

employees of each of the foregoing with respect to any loss covered by such insurance, whether or not caused by negligence of or breach or any agreement by said persons, but only to the extent that insurance proceeds are received in compensation for such loss.

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

Section 6. Annual Review of Policies. All insurance policies shall be reviewed at least bi-annually by the board of directors in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacement of the Property which may have been damaged or destroyed.

Section 7. Miscellaneous.

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

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

(c) **Other Requirements.** All policies of hazard insurance must contain or have attached the standard Mortgagee clause commonly accepted by private institutional Mortgagee investors in the area in which the Property is located. The Mortgagee clause must provide that the insurance carrier shall notify the First Mortgagee named in such policies at

least ten (10) days in advance of the effective date of any reduction in or cancellation of the policy.

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

ARTICLE XIV **Mortgage Protection Clause**

Notwithstanding any and all provisions hereof to the contrary, in order to induce the Federal Home Loan Mortgage Corporation (FHLMC), the Government National Mortgage Association (GNMA) and the Federal National Mortgage Association (FNMA) to participate in the financing of the sale of Dwelling Units within the Property, the following provisions are added hereto (and to the extent these added provisions conflict with any other provisions of the Declaration, these added provisions shall control);

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

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

Section 3. Non-Liability for Prior Unpaid Dues or Charges. Any First Mortgagee, or a purchaser who purchases a Dwelling Unit from any First Mortgagee who obtains title to a Dwelling Unit pursuant to a deed (or assignment) in lieu of foreclosure, or pursuant to the

remedies provided in the Mortgage or foreclosure of the Mortgage, will not be liable for such Dwelling Unit's unpaid dues or charges which accrue prior to the acquisition of title to such Dwelling Unit by the First Mortgagee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 13. Non-Owner Occupied Dwelling Units. No Owner may sell any Dwelling Unit to a third party on a non-owner occupied basis without the prior written approval of the Board.

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

ARTICLE XV
Annexation of Additional Property

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

Section 1. Additions by Declarant. If the Declarant, its successors or assigns, shall develop, or cause to be developed, additional real property (the "Annexed Property") contiguous to the Property, the Declarant, or its successors or assigns, shall have the right from time to time to add the Annexed Property or any Annexed Property within the general plan and scheme of the Declaration without the approval of the Association, its Board, or Members; provided that such right of the declarant, its successors and assigns, shall terminate ten (10) years from the date of recording this Declaration.

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

Section 3. Title to Common Area. Prior to the conveyance of any Dwelling Unit within the Annexed Property to any individual purchaser thereof, whether such annexation was accomplished by either method set forth in Section 1 and 2 above, title to the Common Area, if any, within said Annexed Property shall be conveyed to the Association, free and clear of any and all encumbrances and liens, subject to reservations, easements, covenants, conditions and restrictions then of record, including those set forth in this Declaration.

Section 4. Notice of Addition of Property. The additions authorized under Sections 1 and 2 of this Article XV shall be made by filing of record a Notice of Addition of Property, or other similar instrument (which Notice or instrument may contain the Supplemental Declaration, if any, affecting each Subdivision), with respect to the Annexed Property which shall be executed by the Declarant or the owner thereof and shall extend the general plan and schemes of this Declaration of the Annexed Property. The filing of record of said Notice of addition shall constitute and effectuate the annexation of the Annexed Property described therein, and thereupon the Annexed Property shall become and constitute a part to the Property, become subject to this Declaration and encompassed within the general plan and scheme of covenants, conditions, restrictions, reservations of easements and equitable servitudes contained herein, and become subject to the functions, powers and jurisdiction of the Association; and the Owners of Dwelling Units in

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

ARTICLE XVI
Easements of Association and Owners

In addition to the easements otherwise provided in this Declaration, the Association and the Owners shall have the following easements:

Section 1. Easement of Encroachment. If any part of the Common Areas encroach or hereafter shall encroach upon a Dwelling Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Dwelling Unit encroaches or shall hereafter encroach upon any part of the Common Areas, or upon an adjoining Dwelling Unit(s), an easement for such encroachments and for maintenance shall and does exist. Such encroachments shall not be considered to be encumbrances either to the Common Areas or the Dwelling Units. Encroachments referred to herein include, but are not limited to, encroachment caused by error in the original construction of a Dwelling Unit on the Property, by error in the Plat Map, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof.

Section 2. Access for Repairs. Some of the Common Areas are or may be located near or conveniently assessable through the Dwelling Units. The Owners of the other Dwelling Units shall have the irrevocable right to be exercised by the Board, as its agent, to have access to each Dwelling Unit and to all Common Areas, from time to time, during such reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Areas assessable therefrom or for making emergency repairs therein necessary to prevent damage to the Common Area or to another Dwelling Unit(s). The Board shall also have such rights, independent of the agency relationship. Damage to a Dwelling Unit or any part thereof resulting from the maintenance, repair, emergency repair or replacement of any of the Common Areas or as a result of emergency repairs within another Dwelling Unit, at the instance of the Board or of the Unit Owner shall be the responsibility of the Association; provided, that if such damage is the result of negligence the Owner of a Dwelling Unit, then such Owner shall be financially responsible for all such damage. Amounts owing by the Owners pursuant hereto shall be collected by the Board by Assessment.

Section 3. Right of Ingress and Egress. Each Owner shall have the right to ingress and egress over, upon and across the Common Areas necessary for access to the Owner's Dwelling Unit and such rights shall be appurtenant to and pass with the title to each Dwelling Unit.

Section 4. Pipes, Ducts, Cables, Wires, Conduits, Public Utility Lines and Other Common Facilities Located Inside the Dwelling Unit. Each Dwelling Unit Owner shall have a easement common with Owners of all other Dwelling Units to use all public utilities, lines and other common facilities located in any of the other Dwelling Units. Each Dwelling Unit shall be subject to an easement in favor of the Owners of all other Dwelling Units to use the public utility lines and other common facilities serving such other Dwelling Units and located in such Dwelling Unit. The Board shall have a right of access to each Dwelling Unit to inspect the same, to remove said violations therefrom and to maintain, repair or replace the Common Areas contained therein.

Section 5. Easement of Board and Its Designated Agent(s). The Board and its designated agent(s) shall have non-exclusive easements to make such use of the Common Areas as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration.

Section 6. Easement for Utilities Services. There is hereby created a blanket easement upon, across, over and under the Property for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to, water, sewer, gas, telephone, electricity, cable and other utility services.

ARTICLE XVII **General Provisions**

Section 1. Enforcement. This Declaration, the Articles of Incorporation, and the By-laws may be enforced by the Association as follows:

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

(b) The result of every act or omission whereby any of the covenants contained in this Declaration, the Articles of Incorporation or By-laws are violated in whole or in part is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance either public or private shall be applicable against every such result and may be exercised by any Owner, by the Association or its successors-in-interests.

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

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

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

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

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

Section 4. Amendments. This Declaration may be amended only by the majority vote of those Members entitled to vote who are in attendance at the annual meeting of Members or the majority or those Members entitle to vote who respond to a request for written consent, except with respect to matters dealt with herein which require a higher percentage for approval thereof; provided, however, that the prior written approval of at least one hundred percent (100%) of all First Mortgagees must be obtained as provided in Section 12 of Article XIV above.

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

Section 6. Constructive Notice and Acceptance. Every person who owns, occupies or acquires any right, title, estate or shall be conclusively deemed to have consented and agreed to every limitation, restriction, easement, reservation, condition and covenant contained

herein, whether or not any reference to these restrictions is contained in the instrument by which such person acquired an interest in the Property, or any portion thereof.

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

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

Section 9. No Representations or Warranties. No representations or warranties of any kind, express or implied, have been given or made by the Declarant or its agents or employees in connection with the Property or any portion of the Property, or any improvement thereon, its physical condition, zoning, compliance with applicable laws, fitness for intended use, or in

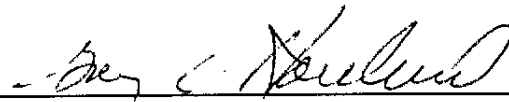
connection with the subdivision, sale, operation, maintenance, costs of maintenance, taxes or regulation thereof as a condominium development, except as specifically and expressly set forth in this Declaration and except as may be hereafter filed by the Declarant from time to time.

Section 10. Arbitration. Any disputes arising from or relating to this Declaration shall be resolved in Salt Lake County pursuant to the then applicable rules of arbitration of the American Arbitration Association, or such other rules of arbitration as the parties to the dispute shall agree.

IN WITNESS WHEREOF, this Declaration has been executed as of the day and year first above written.

DECLARANT:

HIGHLAND POINTE, L.C.
By Eagle Pointe Financial Group, Inc., its Manager




Gary L. Howland, President of Eagle Pointe Financial Group, Inc.

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

On this 23 day of October, 2000, personally appeared before me Gary L. Howland, who being by me duly sworn, did say that he is the President of Eagle Pointe Financial Group, Inc., the Manager of HIGHLAND POINTE, L.C., a Utah limited liability company, and that he is authorized to and did sign the within and foregoing Declaration in behalf of the limited liability company.

My Commission Expires:
9-6-2004



Notary Public
Residing at, Salt Lake City, Utah



BK8405PG8037

ATTACHMENT A

Beginning at a point which is South 07°50'02" West 1273.71 feet from the East quarter corner of Section 16, Township 2 South, Range 1 East, Salt Lake Base and Meridian; the point of beginning also being South 00°20'50" West 1261.67 feet and South 88°30'00" East 40.00 feet from a Salt Lake County brass monument in Highland Drive; running thence South 88°30'00" East 365.81 feet to the Southwest corner of Lot 5 of the Fardown Estates Subdivision, as recorded in the office of the Salt Lake County Recorder, thence South 88°30'00" East 146.43 feet along said subdivision, thence South 87.90 feet, thence North 88°30'00" West 58.97 feet, thence South 82.50 feet to the North line of Lot 9 of Fardown Estates, thence South 108.08 feet to the South Line of said Lot 9, thence along the South boundary of said Lot 9 North 88°30'00" West 66.79 feet to the Southwest corner of said Lot 9, thence North 2.66 feet, thence North 88°30'00" West 428.15 feet, thence North 00°20'50" East 275.79 feet, thence South 88°30'00" East 40.00 feet to the point of beginning.

Containing 141,597 square feet (3.25 acres). 19 lots.

<u>Lot #</u>	<u>Parcel #</u>
4	22-15-351-029-0000
5	22-15-351-031-0000
6	22-15-351-030-0000
7	22-15-351-033-0000
8	22-15-351-034-0000
9	22-15-351-032-0000
10	22-15-351-035-0000
11	22-15-351-027-0000
12	22-15-351-026-0000
13	22-15-351-025-0000
14	22-15-351-024-0000
17	22-16-482-004-0000
pool area	22-16-482-010-0000

ATTACHMENT B

(Attached to and forming a part of the Declaration of Covenants, Conditions and Restrictions of the Highland Pointe Village Planned Unit Development)

BYLAWS

OF

HIGHLAND POINTE VILLAGE HOMEOWNERS ASSOCIATION

A Nonprofit Corporation

Pursuant to the provisions of the Utah Nonprofit Corporation and Co-operative Association Act, the initial Board of Trustees of Highland Pointe Village Homeowners Association, a Utah nonprofit corporation, hereby adopts the following Bylaws for such nonprofit corporation.

ARTICLE I

NAME AND PRINCIPAL OFFICE

1.1 **Name.** The name of the nonprofit corporation is Highland Pointe Village Homeowners Association, hereinafter referred to as the "Association."

1.2 **Offices.** The initial principal office of the Association shall be at 2040 East Murray Holladay Road, Suite 300, Salt Lake City, Utah 84117. This Project is situated on the real property in Salt Lake County, State of Utah, described on Exhibit A attached.

ARTICLE II

DEFINITIONS

2.1 **Definitions.** Except as otherwise provided herein or as otherwise required by the context, all terms defined in Article I of the Declaration of Covenants, Conditions and Restrictions of the Highland Pointe Village Planned Unit Development (the "Declaration"), shall have such defined meanings when used in these Bylaws.

ARTICLE III

MEMBERS

3.1 Annual Meetings. The annual meeting of members shall be held on the second Tuesday in October of each year at the hour of 7:00 p.m., beginning with the year following the year in which the Articles of Incorporation are filed, for the purpose of electing Trustees (if the Declarant has then turned over to the members responsibility for so doing) and transacting such other business as may come before the meeting. If the election of trustees shall not be held on the day designated herein for the annual meeting of the members, or at any adjournment thereof, the Board of Trustees shall cause the election to be held at a special meeting of the members to be convened as soon thereafter as may be convenient. The Board of Trustees may from time to time by resolution change the date and time for the annual meeting of the members.

3.2 Special Meetings. Special meetings of the members may be called from time to time by the Board of Trustees or by the President, and shall be immediately called by the President upon the written request of members holding not less than ten percent (10%) of the total votes of the Association, such written request to state the purpose or purposes of the meeting and to be delivered to the Board of Trustees or the President. In case of failure to call such meeting within twenty (20) days after such request, such members may call the same.

3.3 Place of Meetings. The Board of Trustees may designate any place in Salt Lake County, State of Utah, as the place of meeting for any annual meeting or for any special meeting called by the Board of Trustees. A waiver of notice signed by all of the members may designate any place, either within or without the State of Utah, as the place for holding such meeting. If no designation is made, or if a special meeting is otherwise called, the place of meeting shall be at the principal office of the Association.

3.4 Notice of Meetings. The Board of Trustees shall cause written or printed notice of the time, place, and purpose of all meetings of the members (whether annual or special) to be delivered, not more than fifty (50) nor less than ten (10) days prior to the meeting, to each member of record entitled to vote at such meeting. If mailed, such notice shall be deemed to have been delivered three (3) days after it was deposited in the U.S. mail addressed to the member at the member's registered address, with first class postage thereon prepaid. Each member shall register with the Association such member's current mailing address for purposes of notice. Such registered address may be changed from time to time by notice in writing to the Association. If no address is registered with the Association, the member's Unit address shall be deemed to be the member's registered address for purposes of notice hereunder.

3.5 Members of Record. Upon purchasing a Dwelling Unit in the Project, each Owner shall promptly furnish to the Association a certified copy of the recorded instrument by which

ownership of such Dwelling Unit has been vested in such owner, which shall be maintained in the records of the Association. For the purpose of determining members entitled to notice of or to vote at any meeting of the members, or any adjournment thereof, the Board of Trustees may designate a record date, which shall not be more than fifty (50) nor less than ten (10) days prior to the meeting. If no record date is designated, the date on which notice of the meeting is mailed shall be deemed to be the record date for determining members entitled to notice of or to vote at the meeting. The persons or entities appearing in the records of the Association on such record date as the Owners of record of the Dwelling Units in the Project shall be deemed to be the members of record entitled to notice of and to vote at the meeting of the members and any adjournments thereof.

3.6 Quorum. At any meeting of the members, the presence of members holding, or holders of proxies entitled to cast, more than sixty percent (60%) of the total votes of the Association shall constitute a quorum for the transaction of business. If a quorum is not present at a meeting, the members present (whether represented in person or by proxy), through less than a quorum may adjourn the meeting to a later date. Notice delivered to the members as provided above. At the reconvened meeting, the members and proxy holders present shall constitute a quorum for the transaction of business.

3.7 Proxies. At each meeting of the members, each member entitled to vote shall be entitled to vote in person or by proxy; provided, however, that the right to vote by proxy shall exist only where the instrument authorizing such proxy to act shall have been executed by the member himself or by his attorney thereunto duly authorized in writing. If a membership is jointly held, the instrument authorizing a proxy to act must have been executed by all holders of such membership or their attorneys duly authorized in writing. Such instrument authorizing a proxy to act shall be delivered at the beginning of the meeting to the secretary of the Association or to such other officer or person who may be acting as secretary of the meeting. The secretary of the meeting shall enter a record of all such proxies in the minutes of the meeting.

3.8 Votes. Subject to the provisions of the Declaration, with respect to each matter (other than the election of Trustees) submitted to a vote of the members, each member entitled to vote at the meeting shall have the right to cast, in person or by proxy, the number of votes appertaining to the Dwelling Unit of such member, as is entitled to be cast by the members present or represented by proxy at a meeting at which a quorum was initially present shall be necessary for the adoption of any matter voted on by the members, unless a greater proportion is required by the Articles of Incorporation, these Bylaws, the Declaration, or Utah law. If a membership is jointly held, all or any holders thereof may attend each meeting of the members, but such holders must act unanimously to cast the votes relating to their joint membership.

3.9 Waiver of Irregularities. All inaccuracies and irregularities in calls or notices of meetings and in the manner of voting, form of proxies, and method of ascertaining members present shall be deemed waived if no objection thereto is made at the meeting.

3.10 Informal Action by Members. Any action that is required or permitted to be taken at a meeting of the members may be taken without a meeting, if a consent in writing, setting forth the action so taken, shall be signed by all of the members entitled to vote with respect to the subject matter thereof.

ARTICLE IV

BOARD OF TRUSTEES

4.1 General Powers. The property, affairs, and business of the Association shall be managed by its Board of Trustees. The Board of Trustees may exercise all of the powers of the Association, whether derived from law or the Articles of Incorporation, except such powers as are by law, by these Articles of Incorporation, by these Bylaws, or by the Declaration vested solely in the members. The Board of Trustees may by written contract delegate, in whole or in part, to a professional management organization or person such of its duties, responsibilities, functions, and powers as are properly delegable.

4.2 Initial Board of Trustees. The initial Board of Trustees shall be composed of three (3) Trustees. The Trustees specified in the Articles of Incorporation, and any replacements duly appointed by Declarant, shall serve until the first meeting of the members held after the Declarant turns over to the members the responsibility for electing Trustees and until his or her successor(s) is/are duly elected and qualified. The trustee specified in the Articles of Incorporation, and any replacements duly appointed by the Declarant, need not be residents of the State of Utah.

4.3 Permanent Board of Trustees. After the Declarant turns over to the members responsibility for electing trustees, the Board of Trustees shall be composed of three (3) Trustees who shall be Owners (or officers, directors, or partners of Residential Owners that are corporations or partnerships). Trustees need not be residents of the State of Utah.

Notwithstanding any other provisions of these Bylaws, Eagle Pointe Financial Group, Inc. shall be entitled to elect one of the Trustees, who shall also be the President of the Board of Trustees, and who may not be removed from office as a trustee and president by the Members unless they unanimously agree, in writing, that such person should be removed for cause. Cause shall mean gross negligence or willful misconduct in office or conviction of a crime involving moral turpitude. Eagle Pointe Financial Group, Inc. may replace such trustee at such time as it sees fit.

4.4 Elections of Permanent Trustees. Subject to the provisions of paragraph 4.3 above, at the first meeting of the members held after the Declarant turns over to the members responsibility for electing trustees, Owners shall elect two (2) Trustees to serve for terms of three years each and one (1) trustee to serve for a term of two years. Elections of Trustees shall be conducted by secret ballot.

4.5 Regular Meetings. The regular annual meeting of the Board of Trustees shall be held without other notice than this bylaw immediately after, and at the same place as, the annual meeting of the members. The Board of Trustees may provide by resolution the time and place, within Salt Lake County, State of Utah, for the holding of additional regular meetings without other notice than such resolution.

4.6 Special Meetings. Special meetings of the Board of Trustees may be called by or at the request of any Trustee. The person or persons authorized to call special meetings of the Board of Trustees may fix any place in Salt Lake County, State of Utah, as the place for holding any special meeting of the Board of Trustees called by such person or persons. Notice of any special meeting shall be given at least five (5) days prior thereto by written notice delivered personally, or mailed to each Trustee at his registered address, or by telegram. If mailed, such notice shall be deemed to have been delivered three (3) days after it is deposited in the U.S. mail so addressed, with first class postage thereon prepaid. If notice is given by telefax, such notice shall be deemed to have been delivered when the telefax's delivery is duly confirmed by the sending equipment. Any Trustee may waive notice of a meeting, in writing.

4.7 Quorum and Manner of Acting. Before the time that Declarant turns over to the Owners responsibility for electing Trustees, a majority of the then authorized number of Trustees shall constitute a quorum for the transaction of business at any meeting of the Board of Trustees. Thereafter, a majority of the then authorized number of Trustees shall constitute a quorum for the transaction of business at any meeting of the Board of Trustees. Except as otherwise required in these Bylaws, the Articles of Incorporation, of the Declaration, the act of a majority of the Trustees present at any meeting at which a quorum is present shall be the act of the Board of Trustees. The Trustees shall act only as a Board, and individual Trustees shall have no powers as such.

4.8 Compensation. No Trustee shall receive compensation for any services that the Trustee may render to the Association as a Trustee; provided, however, that a Trustee may be reimbursed for expenses incurred in the performance of the Trustee's duties as a Trustee to the extent such expenses are approved by the Board of Trustees and (except as otherwise provided in these Bylaws) may be compensated for services rendered to the Association other than in the Trustee's capacity as a Trustee.

4.9 Resignation and Removal. A Trustee may resign at any time by delivering a written resignation to either the President or to the Board of Trustees. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any Trustee may be removed at any time, for or without cause, by the affirmative vote of the Owners holding at least sixty percent (60%) of the total number of votes appurtenant to all Units in the Project, at a special meeting of the members duly called for such purpose.

4.10 Vacancies and Newly Created Trusteeships. If vacancies shall occur in the Board of Trustees by reason of the death, resignation, or disqualification of a Trustee, or if the authorized number of Trustees shall be increased, the Trustees then in office shall continue to act, and such vacancies or newly created Trusteeships shall be filled by a vote of the Trustees then in office, though less than a quorum, in any way approved by such Trustees at the meeting. Any vacancy in the Board of Trustees occurring by reason of the removal of a Trustee by the members may be filled by election at the meeting at which such Trustee is removed. Any Trustee elected or appointed to fill a vacancy shall serve for the unexpired term of the predecessor or for the term of the newly created Trusteeship, as the case may be.

4.11 Informal Action by Trustees. Any action that is required or permitted to be taken at a meeting of the Board of Trustees may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Trustees.

4.12 Amendments. The provisions of this Article IV may not be amended, modified, or repealed, unless such amendment, modification, or repeal is approved by (a) the affirmative vote of owners holding at least sixty percent (60%) of the total number of votes appurtenant to all Residential Units in the Project.

ARTICLE V

OFFICERS

5.1 Officers. The officers of the Association shall be a President, a Vice-President, a Secretary-Treasurer, and such other officers as may from time to time be appointed by the Board of Trustees.

5.2 Election, Tenure, and Qualifications. Subject to the provisions of paragraph 4.3 above, The officers of the Association shall be chosen by the Board of Trustees annually at the regular annual meeting of the Board of Trustees. In the event of failure to choose officers at such regular annual meeting of the Board of Trustees, officers may be chosen at any regular or special meeting of the Board of Trustees. Each such officer (whether chosen at a regular annual meeting of the Board of Trustees or otherwise) shall hold office until the next ensuing regular annual meeting of the Board of Trustees and until the officer's successor shall have been chosen and qualified, or until the officer's death, or until the officer's resignation, disqualification, or removal in the manner provided in these Bylaws, whichever first occurs. Any one person may hold any two or more of such offices. The President, the Vice-President, and the Secretary-Treasurer shall be and remain Trustees of the Association during the entire term of their respective offices. No other officer need be a Trustee.

5.3 Subordinate Officers. The Board of Trustees may from time to time appoint such other officers or agents as it may deem advisable, each of whom shall have such title, hold office for such period, have such authority, and perform such duties as the Board of Trustees may from time to time determine. The Board of Trustees may from time to time delegate to any officer or agent the power to appoint any such subordinate officers or agents and to prescribe their respective titles, terms of office, authorities, and duties. Subordinate officers need not be Trustees or members of the Association.

5.4 Resignation and Removal. Any officer may resign at any time by delivering a written resignation to the President, the Secretary-Treasurer, or to the Board of Trustees. Unless otherwise specified in the resignation, such resignation shall take effect upon delivery. Any officer may be removed by the Board of Trustees at any time, for or without cause.

5.5 Vacancies and Newly Created Offices. If any vacancy shall occur in any office by reason of death, resignation, removal, disqualification, or any other cause, or if a new office shall be created, such vacancies or newly created offices may be filled by the Board of Trustees at any regular or special meeting.

5.6 The President. The President shall preside at meetings of the Board of Trustees and at meetings of the members. The President shall sign on behalf of the Association all conveyances, mortgages, documents, and contracts approved by the Board of Trustees, and shall do and perform all other acts and things that the Board of Trustees may require.

5.7 The Vice-President. The Vice-President shall act in the place and stead of the President in the event of the President's absence or inability or refusal to act, and shall exercise and discharge such other duties as may be required by the Board of Trustees.

5.8 The Secretary-Treasurer. The Secretary-Treasurer shall keep the minutes of the Association and shall maintain such books and records as these Bylaws, the Declaration, or any resolution of the Board of Trustees may require. The Secretary-Treasurer shall be the custodian of the seal of the Association, if any, and shall affix such seal, if any, to all papers and instruments requiring the same. The Secretary-Treasurer shall have the custody and control of the funds of the Association, subject to the action of the Board of Trustees, and shall, when requested by the President to do so, report the state of the finances of the Association at each annual meeting of the members and at any meeting of the Board of Trustees. The Secretary-Treasurer shall perform such other duties as the Board of Trustees may require.

5.9 Compensation. No officer shall receive compensation for any services rendered to the Association as an officer; provided, however, that an officer may be reimbursed for expenses incurred in performance of his or her duties as an officer to the extent such expenses are approved

by the Board of Trustees and (except as otherwise provided in these Bylaws) may be compensated for services rendered to the Association other than in his or her capacity as an officer.

ARTICLE VI

COMMITTEES

6.1 Designation of Committees. The Board of Trustees may, from time to time, by resolution designate such committees as it may deem appropriate in carrying out its duties, responsibilities, functions, and powers. The membership of each such committee designated hereunder shall include at least one Trustee. No committee member shall receive compensation for services rendered to the Association as a committee member; provided, however, that a committee member may be reimbursed for expenses incurred in performance of his or her duties as a committee member to the extent such expenses are approved by the Board of Trustees and (except as otherwise provided in these Bylaws) may be compensated for services rendered to the Association other than in his or her capacity as a committee member.

6.2 Proceedings of Committees. Each committee designated hereunder by the Board of Trustees may appoint its own presiding and recording officers and may meet at such places and times and upon such notice as such committee may from time to time determine. Each such committee shall keep a record of its proceedings and shall regularly report such proceedings to the Board of Trustees.

6.3 Quorum and Manner of Acting. At each meeting of any committee designated hereunder by the Board of Trustees, the presence of members constituting at least a majority of the authorized membership of such committee (but in no event less than two members) shall constitute a quorum for the transaction of business, and the act of a majority of the members present at any meeting at which a quorum is present shall be the act of such committee. The members of any committee designated by the Board of Trustees hereunder shall act only as a committee, and the individual members thereof shall have no powers as such.

6.4 Resignation and Removal. Any member of any committee designated hereunder by the Board of Trustees may resign at any time by delivering a written resignation to the President, the Board of Trustees, or the presiding officer of the committee of which he or she is a member. Unless otherwise specified, such resignation shall take effect upon delivery. The Board of Trustees may at any time, for or without cause, remove any member of any committee.

6.5 Vacancies. If any vacancy shall occur in any committee designated by the Board of Trustees hereunder, due to disqualification, death, resignation, removal, or otherwise, the remaining members shall, until the filling of such vacancy, constitute the then total authorized membership of

the committee and, provided that two or more members are remaining (at least one of which is a Trustee), may continue to act. Such vacancy may be filled at any meeting of the Board of Trustees.

ARTICLE VII

INDEMNIFICATION

7.1 Indemnification - Third-Party Actions. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Association) by reason of the fact that he is or was a Trustee or officer of the Association, or is or was serving at the request of the Association as a director, trustee, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against expenses (including attorney's fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit, or proceeding, if he acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit, or proceeding by an adverse judgment, order, settlement, or conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Association or with respect to any criminal action or proceeding, that the person had reasonable cause to believe that his or her conduct was unlawful.

7.2 Indemnification - Association Actions. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that he or she is or was a Trustee or officer of the Association, or is or was serving at the request of the Association as a director, trustee, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against expenses (including attorney's fees) actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit, if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Association; provided, however, that no indemnification shall be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his or her duty to the Association, unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability and in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

7.3 Determinations. To the extent that a person has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in Sections 7.1 or 7.2 hereof, or in defense of any claim, issue, or matter therein, he or she shall be indemnified against expenses (including attorney's fees) actually and reasonably incurred by him or her in connection therewith. Any other indemnification under Sections 7.1 or 7.2 hereof shall be made by the Association only upon a determination that indemnification of the person is proper in the circumstances because he or she has met the applicable standard of conduct set forth respectively in Sections 7.1 or 7.2 hereof. Such determination shall be made either (a) by the Board of Trustees by a majority vote of disinterested Trustees or (b) by the members by the affirmative vote of at least fifty-one percent (51%) of the total votes of the Association at a meeting duly called for such purpose.

7.4 Advances. Expenses incurred in defending a civil or criminal action, suit, or proceeding as contemplated in this Article may be paid by the Association in advance of the final disposition of such action, suit, or proceeding upon a majority vote of a quorum of the Board of Trustees and upon receipt of an undertaking by or on behalf of the person to repay such amount or amounts unless it ultimately be determined that he is entitled to be indemnified by the Association as authorized by this article or otherwise.

7.5 Scope of Indemnification. The indemnification provided for by this article shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any provision in the Association's Articles of Incorporation, Bylaws, agreements, vote of disinterested members of Trustees, or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office. The indemnification authorized by this article shall apply to all present and future Trustees, officers, employees, and agents of the Association and shall inure to the benefit of the heirs and personal representatives of all such persons and shall be in addition to all other rights to which such persons may be entitled as a matter of law.

7.6 Insurance. The Association may purchase and maintain insurance on behalf of any person who was or is a Trustee, officer, employee, or agent of the Association, or who was or is serving at the request of the Association as a trustee, director, officer, employee, or agent of another corporation, entity, or enterprise (whether for profit or not for profit), against any liability asserted against him or incurred by him in any such capacity or arising out of his status as such, whether or not the Association would have the power to indemnify him or her against such liability under the laws of the State of Utah, as the same may hereafter be amended or modified.

7.7 Payments and Premiums. All indemnification payments made, and all insurance premiums for insurance maintained, pursuant to this article shall constitute expenses of the Association and shall be paid with funds from the Common Expense Fund referred to in the Declaration.

ARTICLE VIII

FISCAL YEAR AND SEAL

8.1 Fiscal Year. The fiscal year of the Association shall begin on the 1st day of January each year and shall end on the 31st day of December next following; provided, however, that the first fiscal year shall begin on the date of incorporation.

8.2 Seal. If the Board of Trustees desires, it may by resolution provide a corporate seal which shall be circular in form and shall have inscribed thereon the name of the Association, the state of incorporation, the nonprofit nature of the Association, and the words "Corporate Seal."

ARTICLE IX

RULES AND REGULATIONS

9.1 Rules and Regulations. The Board of Trustees may from time to time adopt, amend, repeal, and enforce reasonable rules and regulations governing the use and operation of the Project; provided, however, that such rules and regulations shall not be inconsistent with the rights and duties set forth in the Articles of Incorporation, the Declaration, or these Bylaws. At all times after the Declarant turns over to the regulations relating to the use of Units or access to them must be approved by a majority of the Trustees.

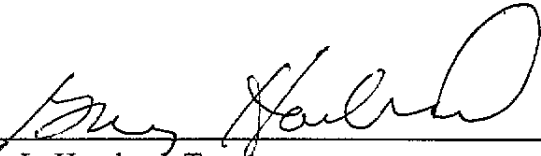
ARTICLE X

AMENDMENTS

10.1 Amendments. Except as otherwise provided by law, by the Articles of Incorporation, by the Declaration, or by the Bylaws, these Bylaws may be amended, modified, or repealed and new bylaws may be made and adopted by the members upon the affirmative vote of at least sixty percent (60%) of the total votes of the Association; provided, however, that such action shall not be effective unless and until a written instrument setting forth (a) the amended, modified, repealed, or new bylaw, (b) the number of votes cast in favor of such action, and (c) the total votes of the Association, shall

have been executed and verified by the current President of the Association and recorded in the office of the County Recorder of Salt Lake County, State of Utah.


IN WITNESS WHEREOF, the undersigned initial Trustee has executed these Bylaws on the 31st day October of 2000.

X 

Gary L. Howland, Trustee



Dennis S. Calton, Trustee

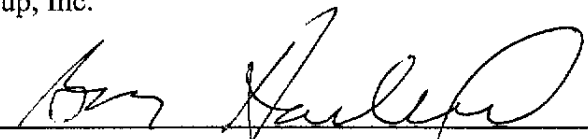


Whit O. Cluff, Trustee

OWNER'S CONSENT

On this 31st day of October, 2000, the undersigned, as the Declarant and Owner of the Property upon which the planned unit development is located, does hereby consent to these Bylaws.

HIGHLAND POINTE, L.C., a Utah limited liability company, by its Manager, Eagle Pointe Financial Group, Inc.

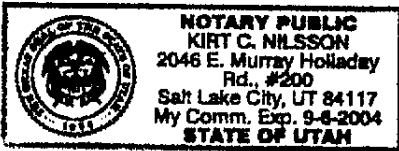
X By 

Gary L. Howland, President of Eagle Pointe Financial Group, Inc.

ACKNOWLEDGMENTS

STATE OF UTAH)
:SS.
COUNTY OF SALT LAKE)

On the 23 day of October, 2000, personally appeared before me GARY L. HOWLAND, the signer of the within and foregoing Bylaws of the Highland Pointe Village Homeowners Association, who duly acknowledged to me that he executed the same.

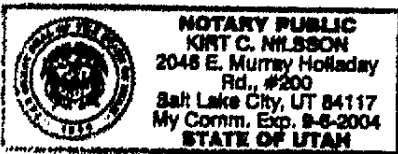


My Commission Expires:
9-6-2004

Kirt C. Nilsson
Notary Public
Residing at Salt Lake City, Utah

STATE OF UTAH)
:SS.
COUNTY OF SALT LAKE)

On the 3 day of November, 2000, personally appeared before me Dennis S. Calton, the signer of the within and foregoing Bylaws of the Highland Pointe Village Homeowners Association, who duly acknowledged to me that he executed the same.

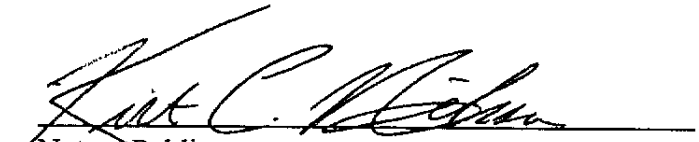


My Commission Expires:
9-6-2004

Kirt C. Nilsson
Notary Public
Residing at Salt Lake City, Utah

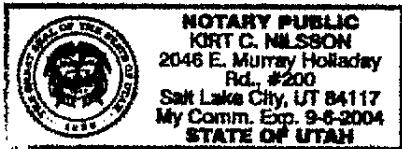
STATE OF UTAH)
:SS.
COUNTY OF SALT LAKE)

On the 30 day of October, 2000, personally appeared before me Whit O. Cluff, the signer of the within and foregoing Bylaws of the Highland Pointe Village Homeowners Association, who duly acknowledged to me that he executed the same.



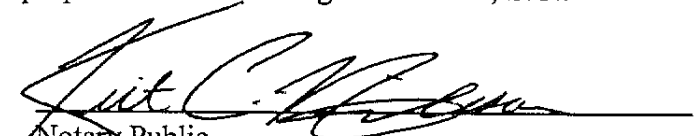
Notary Public
Residing at Salt Lake City, Utah

My Commission Expires:



STATE OF UTAH)
:SS.
COUNTY OF SALT LAKE)

On the 31 day of October, 2000, personally appeared before me GARY L. HOWLAND, who being by me duly sworn did say that the within and foregoing Owner's Consent was signed by him voluntarily for its stated purpose on behalf of Highland Pointe, L.C..



Notary Public
Residing at Salt Lake City, Utah

My Commission Expires:

9-6-2004

