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RETURNED

JUN 15 1994

DECLARATION OF RESTRICTIVE COVENANTS
CONDITIONS, RESTRICTIONS
FOR

FOXBRIDGE SUBDIVISION PLAT

E 1125451 B 1770 P 259
/ CAROL DEAN PAGE, DAVIS CNTY RECORDER
JUN 15 1:03 PM FEE \$2.00 DEP JB
K REC'D FOR CENTERVILLE CITY

Lots 1 to 21 & parcels A & B

THIS DECLARATION of Protective and Restrictive Covenants, Conditions and Restrictions ("Declaration") is made and executed by J.A. Anderson Construction, Inc., a Utah corporation this 25 day of May, 1994 (hereinafter referred to as "Declarant").

RECITALS:

02-124

WHEREAS, Declarant is the sole owner of the real property and improvements ("Property") located in Davis County, Utah, hereinafter more particularly as follows:

Lots 1 through 21, inclusive, FOXBRIDGE PLAT K, according to the official plat thereof, as recorded in the office of the County Recorder of Davis County, Utah.

WHEREAS, Declarant, by recording this Declaration, intends and desires to impose upon the real property described above, protective and restrictive covenants, conditions, restrictions and stipulations to affect the use and enjoyment of all lots in said subdivision with certain permanent open space, streets, utilities, and other common areas for the benefit of said community.

WHEREAS, The covenants, conditions and restrictions contained in this Declaration and in the appendices hereto shall be enforceable equitable servitudes and shall run with the land.

WHEREAS, Declarant has filed simultaneously herewith a Plat Map ("Map") which is incorporated herein by reference.

WHEREAS, Declarant has deemed it desirable for the efficient preservation of the values and amenities in said community to create a Home Owners Association (the "Association") which will be assigned and delegated the powers of maintaining and administering the common area properties and facilities and administering and enforcing the covenants and restrictions within the Declaration and collecting and disbursing the assessments and charges hereinafter created.

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, conditions and stipulations, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and shall be binding on all parties

having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

1. Dedication.

1.1 Declarant, by the filing and recordation of this Declaration, and the aforesaid Plat Map, submits the herein described real property and other improvements to be constructed thereon to the provisions of this Declaration for the development of a subdivision. Declarant desires and intends to sell fee title to each lot of the subdivision, as well as an interest in the Association which shall own the Common Areas and Facilities appurtenant thereto. All lots, as well as the common areas, shall be subject to the covenants, limitations and restriction contained herein.

1.2 The administration of the Association and the property shall be governed by Articles of Incorporation and Bylaws which are embodied in separate instruments, copies of which are appended to and recorded with this Declaration as Appendix A1 and A2. The Declarant shall make available to owners, lenders and mortgagees copies of the Declaration, Articles of Incorporation and Bylaws of the Association and any other books, records, rules and regulations, as well as copies of an annual financial statement, if any if prepared, upon request.

1.3 All terms used in this Declaration and the appended Articles of Incorporation and Bylaws shall have the same definition as provided herein unless the context or other statutory regulation shall require otherwise.

1.4 The property shall be known as Foxbridge Subdivision Plat K. The mailing address of the property and the Declarant is: J.A. Anderson Construction, Inc., a Utah corporation, 153 East Rollinhills Dr., Centerville, Utah 84014. The approximate address of the property is 1550 North 725 West, Centerville, Utah.

1.5 The Property shall be that certain real property located in Davis County, State of Utah containing approximately 6.3 acres as more particularly described in the Recitals of this Declaration and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

1. Construction and Building Protective Covenants, Restrictions and Conditions. Each lot owner by accepting a conveyance to or ownership in a lot agrees to the following terms, conditions, restrictions and protective covenants:

2.1 Land Use and Building Type. No lots shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any lot other than one detached single-family dwelling not to exceed two stories in height, and private garages for not more than three vehicles. All structures to contain no less than a two-car enclosed garage and not more than a three-car enclosed garage. All construction to be of new brick, except that used brick may be used with prior written approval of the Architectural Control

Committee. Said premises shall be used for private residence purposes only, except as hereinafter set forth and no structure of any kind shall be moved from any other prior residence upon said premises, nor shall any incomplete building be permitted to remain incomplete for a period in excess of one year from the date the building was started unless approval for the additional time is granted by the Architectural Control Committee.

2.2 Architectural Control. No building shall be erected, placed or altered on any lot until the construction plans and specifications and a plan showing the location of the structure have been approved by the Architectural Control Committee as to the quality and materials, harmony of external design with existing structures, as to location with respect to topography and finish grade elevation and as to compliance with the Declaration. No fence or wall shall be erected, placed or altered on any lot nearer to any street than the front building setback line unless similarly approved. Fences shall be constructed in coordination with the general architecture and character of the surrounding area. Approval shall be as provided in Section 2.15.

2.3 Dwelling Cost, Quality and Size. The ground square area of the main structure exclusive of garage and any one-story porches shall not be less than 1,200 square feet for a one-story dwelling. In a split level dwelling, the combined area of a single level and each of the two levels in the adjoining two-story portion of the dwelling, exclusive of garage and any one-story porches shall total not less than 1,350 square feet. In a two-story home which is two stories above the curb level, exclusive of garage and any one-story open porches, shall total not less than 1,600 square feet. In a split entry dwelling, the combined area of the above ground level and the below ground level shall be at least 1,600 square feet, with the above ground level being not less than 1,000 square feet, exclusive of garage and any one story porches. If four feet or more of foundation is above finished grade, then the basement becomes a story. For the purposes of these covenants, the basement area shall in no event be considered a story. No dwelling or garage shall be constructed with a flat roof. All roofs shall have a minimum of a 4-12 pitch. All roofs shall be of quality asphalt shingles, unless otherwise approved by the Architectural Control Committee.

Dwelling exteriors shall be at least 15% brick or stone veneer. The balance of the exterior shall be high quality stucco or aluminum siding in traditional earth tones indigenous to the area.

No dwelling with a value of less than \$80,000.00 shall be constructed on any lot. Said \$80,000.00 amount shall be exclusive of the lot's value based upon fair market value on the date these covenants are recorded adjusted for inflation or deflation in accordance with the Consumer Price Index - US City Average - All Urban Consumers - All Items (or if it is not published, a comparable index).

It is the purpose of this covenant to assure that all dwellings shall be of a quality of workmanship and materials substantially the same as or better than that which can be produced at the date that these covenants are recorded.

2.4 Building Location.

2.4.1 No dwelling shall be located on any lot nearer than 25 feet to the front lot line.

2.4.2 No dwelling shall be located nearer than eight feet to any side lot line. No dwelling shall be located nearer than 16 feet to any adjoining dwelling. No dwelling shall be located on any interior lot nearer than 20 feet to the rear lot line. Unless a written exception is granted by the Architectural Control Committee where unusual circumstances exist, side yards, rear yard and setback lines as defined by the buildable area on the recorded subdivision plat shall apply to all homes built. Detached garages or other permitted accessory buildings may be located ten feet or more from the rear lot line, so long as such buildings do not encroach upon any easement.

2.4.3 For the purpose of this covenant, coves, steps, and open porches shall not be considered as part of a building, provided, however, that this shall not be construed to permit any portion of any building on a lot to encroach upon another lot.

2.5 Lot Area and Width. No dwelling shall be erected or placed on any lot having a width of less than 70 feet at the front building setback line nor shall any dwelling be erected or placed on any lot having an area of less than 8,500 square feet.

2.6 Nuisance. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. No clothes drying or storage of any articles which are unsightly in the opinion of the Architectural Control Committee will be permitted unless in enclosed areas designed for such purposes. No Lot Owner shall conduct any activity on his or her property which is or may become unsafe or hazardous to any person or property.

2.7 Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other on-buildings shall be used on any lot at any time as a residence either temporarily or permanently. No mobile homes are permitted.

2.8 Signs. No sign of any kind shall be displayed to the public view on any lot except one professional sign of not more than one square foot, one sign of not more than five square feet advertising the property for sale or rent, except signs used by the developer to advertise the property during the construction and sales period may be as large as deemed appropriate by the developer.

2.9 Livestock and Poultry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose and are restricted to the owner's premises or on leash under handler's control.

2.10 Garbage and Refuse Disposal. Trash, garbage or other waste shall not be kept on a lot, or common areas or Limited Common Areas except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. Each lot and its abutting street are to be kept free of trash, weeds and other refuse by the lot owner. No unsightly materials or other objects are to be stored on any lot in view of the general public.

2.11 Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.

2.12 Rooftop Antennas. No television, ham radio, citizen band or radio antenna or other similar electronic receiving or sending device shall be permitted upon the rooftop or side of any home or elsewhere is exposed to the view from any other lot unless approved by the Architectural Control Committee. In no case will any such receiving or sending antenna or other device be allowed to interfere with the peace and quiet enjoyment of any neighboring lot owner's premises or home entertainment facilities or equipment.

2.13 Storage. Open storage shall be shielded from the street or from neighboring properties. Each garage shall have built-in storage space. It is required that shielded space behind the front lot line be provided for all campers, boats, pick-ups, vans, and other recreational or commercial vehicles shall be kept out of sight. No automobiles shall be allowed to park on the street or within the front setback overnight, but must be kept in the garage.

2.14 Architectural Control Committee Membership. The Architectural Control Committee is composed of Joel A. Anderson, Gail B. Anderson and Mark E. Anderson, 153 East Rollinghills Dr., Centerville, Utah. A majority of the committee may designate a representative to act for it. In the event of death or resignation of any member of the committee, the remaining members of the committee, or its designated representative, shall be authorized to appoint a successor to that member. No member of the committee, or its designated representative shall be entitled to any compensation for services performed pursuant to this covenant. At any time, the then record owners of a majority of the lots shall have the power through a duly recorded written instrument to change the membership of the committee or to withdraw from the committee or restore to it any of its powers and duties.

2.15 Procedure for Approval. The Committee's approval or disapproval as required in these covenants shall be in writing. In the event the Committee, or its designated representative, fails to approve or disapprove a plan or specifications within 30 days after such plans and specifications have been submitted to it, approval will not be required and the related covenants shall be deemed to have been complied with.

2.16 **Term.** These covenants in this Section 2 are to run with the land and shall be binding on all parties and all persons claiming under them for a period of forty years from the date these covenants are recorded after which said covenants shall automatically be extended for successive periods of ten years unless an instrument signed by a majority of the then owners of the lots has been recorded, agreeing to change said covenants in whole or in part.

2.17 **Enforcement.** Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages.

2.18 **Amendment.** These covenants are to run with the land and shall be binding on all parties and all persons claiming under them unless an instrument signed by a majority of the then owners of the lots has been recorded agreeing to change said covenants in whole or in part.

2.19 **Sight Distance at Intersections.** No fence, wall hedge, or shrub planting which obstructs sight lines at elevations between two and six feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points 25 feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight-line limitations shall apply on a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

3. **Definitions.** The terms used herein shall have the following meanings.

3.1 The words "Home Owners Association" or the "Association" shall mean and refer to Foxbridge Plat K Homeowners Association, a non-profit corporation. The Association is charged with and shall have the responsibility and authority to make and to enforce all the reasonable rules and regulations covering the operation and maintenance of the Project.

3.2 The term "Common Area" and "Common Areas and Facilities" shall mean (i) the areas (including the improvements thereon) defined on the Map as Parcel A denoted "Detention Basin", and (ii) that part of the sub-drain system servicing this subdivision which are located in public streets or dedicated public rights of way. The Common Area and Facilities shall be owned by the Home Owners Association for the common use and enjoyment of Lot Owners. By this Declaration, the Declarant grants, transfers and conveys the Common Areas as described on Exhibit "A" to the Association.

3.3 The words "Common Expenses" shall mean and refer to: all common expenses of administration, insurance, maintenance, repair or replacement of the Common Areas and Facilities including an adequate reserve fund for maintenance, repair and replacement of those Common Areas and Facilities that must be replaced on a periodic basis. Common expenses shall also include all costs and expenses associated with matters which are lawfully assessed to the Lot

Owners in accordance with the provisions of this Declaration, the Articles of Incorporation, Bylaws and such rules and regulations and such other expenses incurred pursuant to agreements lawfully made and/or entered into by the Association.

3.4 The word "Declarant" or "Declarants" shall mean J.A. Anderson Construction, Inc., a Utah corporation, which has made this Declaration and/or any successor to or assignee of the Declarant which, either by operation of law or through a voluntary conveyance, transfer or assignment, comes to stand in the same relation to the project as did its predecessor.

3.5 The word "Declaration" shall mean this instrument.

3.6 The word "Map" or "Plat Map" shall mean and refer to the Subdivision Plat Map of Foxbridge Subdivision Plat K, recorded by Declarant.

3.7 "Project" or "Subdivision" means the Foxbridge Subdivision Plat K.

3.8 "Lot or "Lots" shall mean any plan of land upon which is located a dwelling and is designated as a lot upon the Map. Lots are identified upon the recorded Map by number. Lots do not include the Common Area as defined herein which are or otherwise within the Project.

3.9 The words "Lot Owner" or "Owner" shall mean the entity, person or persons including contract buyers owning a lot within the subdivision. The term Lot Owner or Owner shall not mean or include a mortgagee or a beneficiary or trustee under a deed or trust unless and until such a party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

3.10 The words, "Lot Number" shall mean and refer to the number designating the lot on the Map.

4. Description of Lots.

4.1 The lots shall include the real property together with improvements thereon more particularly described upon the Map.

4.2 Each lot shall include an undivided interest in the Common Areas and Facilities. The percentage of undivided interest in the Association and the Common Areas and Facilities owned by the Association appurtenant to each lot for all purposes, including voting, shall be equal. Each lot, regardless of size, purchase price or location, shall have an equal interest in the Association.

5. Ownership of Common Areas and Facilities.

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The Declarant, with the recordation of this Declaration, does hereby convey and dedicate all of its right, title and interest by means of a Quit Claim Deed in the Common Areas and Facilities (but not the lots) as more particularly described upon the Map to the Foxbridge Plat K Homeowners Association as Parcels A as shown on the Plat Map for its use and the enjoyment of its members, to be held and administered according to the provisions of this Declaration. The Association shall own all Common Areas and Facilities. This Conveyance shall not constitute a dedication of the Common Areas for the general public.

6. The Property.

6.1 The Lots and Common areas and Facilities shall be occupied, maintained and used as follows:

6.1.1 A Lot Owner shall not permit his lot to be occupied or used other than as a private residence for a single family, without the express approval of the Association.

6.1.2 A Lot Owner shall keep his lot, including the grounds surrounding his lot, clean and sightly at all times.

6.1.3 A Lot Owner shall not obstruct the Common Areas and Facilities. A Lot Owner shall not place or store anything within the Common Areas and Facilities without the prior written consent of the Association or its designee.

6.1.4 A Lot Owner shall not alter, construct in, or remove anything from the Common Areas and Facilities, except with the prior written consent of the Association or its designee.

6.1.5 A Lot Owner shall not violate any of the rules and regulations for the Common Areas and Facilities, adopted by the Association and furnished in writing to the Lot Owners.

6.1.6 No Owner shall, without the prior written consent of the Association, make or permit to be made any structural alteration, improvement or addition in or to the Common Areas.

6.1.7 During the course of actual construction of any structures or improvements which are permitted to be located on the Property or upon real property adjacent to the Project, the provisions, covenants, conditions and restrictions contained in this Declaration shall be deemed waived as to the Declarant, its employees, subcontractors, successors or assigns to the extent necessary or convenient to permit such construction and marketing and sale of lots and dwellings thereon; provided, however,

that during the course of such construction, nothing shall be done which would result in a continuing violation of any said provisions, covenants, conditions or restrictions following the completion of such construction upon the Project or adjacent Property.

7. Association of Lot Owners: Management Committee.

7.1 The management of the Association shall be governed by the Articles of Incorporation and Bylaws of the Association. The Association shall be entitled to choose a Management Committee or Board of Directors as such is referred to in the Articles of Incorporation and Bylaws, consisting of three persons who need not be Lot Owners who shall be elected as provided in the Bylaws. All agreements and determinations with respect to the Property lawfully made or entered into by the Association shall be binding upon all the Lot Owners, their successors and assigns. All rights and powers referred to in this Declaration as belonging to the Association, unless specifically provided for otherwise, shall belong to the Association and shall be carried out by the Association's Management Committee. The Management Committee is authorized and empowered to take all actions necessary on behalf of the Association unless specifically provided for otherwise in this Declaration.

7.2 The Association and the Management Committee shall have all the powers, duties and responsibilities as are now or may hereafter be provided to the Board of Directors by this Declaration, the Articles of Incorporation and Bylaws, including but not limited to the following:

7.2.1 To make and enforce all house rules and administrative rules and regulations covering the operation and maintenance of the Common Areas and Facilities.

7.2.2 To engage the services of a manager or managing company, accountants, attorneys or other employees or agents and to pay to said personas a reasonable compensation therefore; provided, however, that any management agreement may be terminable by the Association for cause upon thirty (30) days written notice and without cause with sixty (60) days prior written notice without any penalty, cost or fee, and that the term of any said management agreement may not exceed one (1) year, renewable by agreement for successive one-year periods.

7.2.3 To operate, maintain, repair, improve and replace the Common Areas and Facilities, including the entering into of agreements for the use and maintenance of the Common Areas and Facilities and adjacent, contiguous property for the benefit of the Association.

7.2.4 To determine and pay the Common Expenses.

7.2.5 To assess and collect the proportionate share of Common Expenses from the Lot Owners.

7.2.6 To enter into contracts, deeds, leases and/or other written instruments or documents and to authorize the execution and delivery thereof by the appropriate officers.

7.2.7 To open bank accounts on behalf of the Association and to designate the signatures therefor.

7.2.8 To purchase, hold, sell, convey, mortgage or lease any one or more lots held in the name of the Association or its designee.

7.2.9 To bring, prosecute and settle litigation for itself, the Association and the property, provided that it shall make no settlement which results in a liability against the Association, or the property in excess of \$5,000.00 without prior approval of a majority of Lot Owners.

7.2.10 To obtain insurance for the Association with respect to the Common Areas and Facilities, as well as workman's compensation insurance.

7.2.11 To repair or restore the Common Areas following damage or destruction, or a permanent taking by the power of eminent domain or by an action or deed in lieu of condemnation, not resulting in the removal of the property from provisions of this Declaration.

7.2.12 To own, purchase or lease, hold and sell or otherwise dispose of, on behalf of the Lot Owners, items of personal property necessary to or convenient in the management of the business and affairs of the Association and in the operation of the property.

7.2.13 To keep adequate books and records.

7.2.14 To do all other acts necessary for the operation and maintenance of the property.

7.3 The Association may delegate to a manager or management company all of its foregoing powers, duties and responsibilities referred to in paragraph 7.2 above subject to the provisions of paragraphs 7.2.2, except: the final determination of common expenses, budgets and assessments based thereon; the promulgation of house rules and administrative rules and regulations; the power to enter into any contract involving more than \$5,000.00 in any one fiscal year; the opening of bank accounts; the power to purchase, hold, sell, convey, mortgage or lease any lots in the name of the Association or to bring, prosecute and settle litigation. The foregoing powers shall be maintained by the Association or the Management Committee at all times.

7.4 Members of the Management Committee, the officers and any assistant officer, agents and employees of the Association (i) shall not be liable to any Lot Owner(s) as a result of their activities as such for any mistake of judgment, negligence or otherwise, except for their own willful misconduct or bad faith; (ii) shall have no personal liability in contract to a Lot Owner or any other person or entity under any agreement, instrument or transaction entered into by them on behalf of the Association in their capacity as such; (iii) shall have no personal, direct or imputed liability in tort to any Lot Owner or any person or entity, by virtue of acts performed by them, except for their own willful misconduct or bad faith for acts performed by the Association in their Association capacity; and (iv) shall have no personal liability arising out of the use, misuse or condition of the Property, which might in any way be assessed against or imputed to them as a result or by virtue of their capacity as such.

7.5 The Association shall indemnify and hold harmless, any person, his heirs, and personal representatives, from and against all personal liability and all expenses including counsel fees, incurred or imposed, or arising out of or in settlement of any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative instituted by any one or more Lot Owners, or any other persons or entities, to which he shall be or shall be threatened to be made a party by reason of the fact that he is or was a member of the Management Committee or an officer or assistant officer, agent or employee of the Association, other than to the extent, if any, that such liability or expense shall be attributable to his willful misconduct or bad faith, provided, in the case of any settlement, that the Management Committee shall have approved the settlement, which approval shall not be unreasonably withheld. Such right of indemnification shall not be deemed exclusive of any other rights to which such person may be entitled as a matter of law or agreement or vote of Lot Owners or of the Management Committee or otherwise. The indemnification by the Lot Owners as contained herein shall be paid by the Association on behalf of the Lot Owners and shall constitute a common expense and shall be assessed and collectible as such.

8. Association of Lot Owners; Membership and Voting.

8.1 Membership.

Each Owner shall be entitled and required to be a member of the Association; membership shall begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner. If title to a lot is held by more than one person, the membership appurtenant to the lot shall be shared by all such persons in the same proportionate interests and by the same type of tenancy in which title to the lot is held. An Owner shall be entitled to one membership for each lot owned by him. Each membership shall be appurtenant to the lot to which it relates and shall be transferred automatically by conveyance of that lot. Ownership of a lot within the Project cannot be separated from membership in the Association appurtenant thereto, and any devise, encumbrance, conveyance or other disposition of a lot shall be construed to be a devise, encumbrance, conveyance or other disposition, respectively, of the Owner's membership in the Association, and the rights appurtenant thereto. No person or entity other than an Owner may

be a member of the Association, and membership in the Association may not be transferred except in connection with the transfer of a lot.

8.2 Voting.

The Association shall have two (2) classes of voting membership:

Class A. Class A members shall be Owners, with the exception of the Declarant. Each Class A member shall be entitled to the number of votes appurtenant to each respective lot as shown on Appendix B. In the event more than one Class A member owns an interest in a lot the votes of such lot shall be exercised as they themselves determine, but in no case shall more than one lot have more than one vote by a Class A member.

Class B. The Class B member shall be the Declarant, its successor or assigns, who shall be entitled to three times (3x) the number of votes appurtenant to each respective lot owned by the Declarant.

8.3 Declarant's Control of Management Committee. The Declarant, or some other person or persons selected by the Declarant may appoint and/or remove all members of the Management Committee and all officers of the Association, or at the Declarant's option, may exercise the powers and authority otherwise assigned by the Declaration, the Bylaws and the Articles of Incorporation to the Association or the Management Committee from the date of recordation of this Declaration until Declarant shall have conveyed 75% of the Declarant's undivided interest in the Common Areas and Facilities including additional interests which may be annexed to the Project through the amendment of the Declaration and Map, if any, or December 31, 1996, whichever occurs first. The first annual meeting of the Association shall be held within 120 days of the incorporation of the Association.

9. Maintenance, Alteration and Improvement.

9.1 Association Responsibility. The maintenance, alteration, replacement and repair of the common Areas and Facilities shall be the responsibility of the Association, and the cost thereof shall be a Common Expense. The Association shall maintain to the extent that the same is not provided by utility services, utility mains to the boundary of each lot. All incidental damages caused to a lot by the maintenance, alteration, replacement and repair of the Common Areas and Facilities or utility services shall be repaired promptly at the expense of the Association.

9.2 Lot Owner Responsibility. The Lot Owners shall have the responsibility to maintain, repair, replace and keep in a clean and sanitary condition, at the Lot Owner's expense, all portions of the Owner's Lot.

9.3 Additional Amenities. Declarant expressly reserves the right and authority to modify the layout and design of the Common Areas and Facilities, including the provision of additional amenities thereon, without the consent of the Association or the Lot Owners, during any time while Declarant is in control of the Management Committee as provided under paragraph 8.3 hereof *provided* the Declarant shall pay all costs, expenses and fees associated with the provision, construction and development of the additional amenities and facilities. Declarant shall have the right, without the consent of the Association or the individual Lot Owners, to amend this Declaration and the Map, as necessary, to maintain technical compliance of applicable laws and regulations imposed by the governmental or other institutions financing or guaranteeing the financing of the Projects or Lots therein and in conjunction with the construction and development of any additional amenities as provided in this paragraph. Declarant shall have sole discretion regarding the style, placement, design and method of construction regarding any additional amenities as provided hereunder provided such is constructed in a good workmanlike manner.

9.4 Architectural Style. No building, fence, well or other structure shall be commenced, erected or maintained upon the Project, 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 location in relation to surrounding structures and topography by the Architectural Control Committee. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specification have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

10. Insurance.

10.1 The Association shall obtain and maintain at all times insurance of the type and kind as provided herein and including insurance for such other risks, of a similar or dissimilar nature, covering the Common Areas and Facilities.

10.2 The Association shall obtain a policy or policies of insurance the Association, the Lot Owners and their respective lessees, servants, agents or guests against any liability to the public or to the owners of lots, members of the households of Lot Owners and their respective invitees or tenants, incident to the ownership and/or use of the Common Areas and Facilities, and including the personal liability exposure to the Lot Owners, incident to the ownership and/or use of the Common Areas, public ways and any other area under its supervision. Limits of liability under such insurance shall not be less than One Million Dollars (\$1,000,000.00) for any one person injured in any one occurrence, and shall not be less than One Million Dollars (\$1,000,000.00) for property damage in each occurrence. The limits in coverage of said liability policy or policies shall be reviewed at least annually by the Association and increased at its discretion. Said policy or policies shall be issued on a comprehensive liability basis and, if possible, shall provide cross-liability endorsements for possible claims of any one or more or group of insureds, without prejudice to the right of a named insured under

the policies to maintain the action against another named insured. To the extent possible, such coverage will include protection against water damage liability, liability for non-owned and hired automobile, liability for property of others, legal liability from claims and lawsuits related to employment contracts in which the Association is a party, and such other risks as shall customarily be covered with respect to projects similar in construction, location, and use.

10.3 No Lot Owner shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount that the Association and/or the lot owners, on behalf of all of the Lot Owners, may realize under any insurance policy that the Association may have in force covering the property or any part thereof at any time.

10.4 There may be obtained a blanket fidelity bond for anyone who handles or is responsible for funds held or administered by the Association. The amount of the bond shall not be less than the greater of (i) the sum of three months assessments on all lots plus the Associations reserve funds; or (ii) the maximum funds that will be in the Associations hands; (iii) 150% of the estimated annual operating expense of the planned residential lot development, including reserves. The bond must state that at least ten (10) days written notice will be given to the Association or its insurance trustee to each mortgagee and mortgage servicer prior the cancellation or substantial modification for any reason.

10.5 The Management Committee shall review all policies of insurance obtained pursuant to this article on no less than an annual basis.

11. Termination.

11.1 All of the Lot Owners may remove the Property from the provisions of this Declaration by an instrument signed by all Lot Owners, duly recorded to the effect, provided that the holders of all liens and mortgages affecting any of the lots consent or agree by instruments duly recorded, that their liens or mortgages be transferred to the percentage of the undivided interest of the lot owners in the property.

11.2 After removal of the property from the Declaration, the Common Area and all assets of the Association shall be transferred or contributed to a non-profit organization or entity with similar purposes and powers as the Association. In no event shall the assets of the Association be distributed directly to the prior members of the Association. The respective mortgagees and lienors, if any, shall have mortgages and liens upon the respective undivided interests of the Lot Owners, and such undivided interest in the Common Areas and Facilities appurtenant to the Owners' Lots as may be contributed or transferred to the new Association or entity.

12. Eminent Domain.

12.1 Whenever any proceeding is instituted that could result in the temporary or permanent taking, injury or destruction of all or part of the Common Areas and Facilities, or one or more lots or portions thereof by the exercise of the power in the nature of eminent domain or by an action or deed in lieu of condemnation (all of which shall be defined as "eminent domain"), the Association, each Lot Owner and every holder of all liens affecting the lots, shall be entitled to timely written notice thereof and the Association shall, and the Lot Owners at their respective expense, may participate in the proceedings incident thereto.

12.2 Any awards by reason of eminent domain or in proceedings in lieu thereof, shall be equitably distributed to the lot owners affected by the eminent domain; provided that the priority of any mortgagee's lien shall remain undisturbed.

13. Mortgage Protection.

13.1 The term "mortgage" as used in this Declaration shall mean any recorded mortgage and shall include a recorded deed of trust. The term "mortgagee" shall mean the owner and holder of a mortgage and shall include a beneficiary under a deed of trust.

13.2 The Association shall maintain a roster of Lot Owners from the evidence of change of ownership furnished to the Association, which roster shall include the mailing addresses of Lot Owners. If the Association has been given notice of the necessary information, the Association shall maintain another roster which shall contain the name and address of each mortgagee of a lot. Each notice shall consist of a certified copy of the recorded instrument evidencing the title of the mortgagee. The mortgagee shall be stricken from the roster upon receipt by the Association of a request from the mortgagee or of a certified copy of a recorded release or satisfaction of the mortgage. Notice of such removal shall be given to the mortgagee unless the removal is requested by the mortgagee.

13.3 Any mortgage on any lot is entitled to written notification if so requested from the Association of any default by the mortgagor of such lot in the performance of such mortgagor's obligation under the Declaration which is not cured within thirty (30) days.

13.4 Any mortgagee upon written request shall have the right to examine the books and records of the Association during normal business hours and shall be entitled to receive copies of annual reports and other financial data within ninety (90) days following the end of any fiscal year and shall be entitled to receive notice of all meetings of the Association and may designate a representative to attend all such meetings.

13.5 A mortgagee of any lot who comes into possession of the lot pursuant to the remedies provided in the mortgage, foreclosure of mortgage, or deed (or assignment) in lieu of foreclosure, shall take the property free of any claims of unpaid assessments or charges against the mortgaged lot which accrued prior to the time such mortgagee comes into the possession of

the lot (except for claims for a pro-rata share of such assessments or charges resulting from a pro rata reallocation of such assessments or charges to all lots, including the mortgaged lot).

13.6 The liens created pursuant to this Declaration, the Articles or Bylaws, upon any lot shall be subordinate to, and shall not affect the rights of a mortgagee whose interest was recorded prior to the recordation of the Notice of Lien, provided such mortgagee's interest would have priority, by law, over subsequently recorded encumbrances, or liens arising from tax and special assessment liens in favor of the assessing lot or special improvement district.

13.7 No lot may be partitioned or subdivided without the prior written approval of the mortgagee of the affected lot.

13.8 No amendment to this paragraph shall affect the rights of a mortgagee recorded prior to the recordation of any such amendment not otherwise entitled thereto.

13.9 Notices of Action. A holder, insurer or guarantor of a first mortgage, upon written request to the Association, (such request to state the name and address of such holder, insurer or guarantor and the lot number), will be entitled to timely written notice of:

13.9.1 Any proposed amendment to the Declaration effecting a change in (iv) the boundaries of any lot or the exclusive easement rights appertaining thereto, (v) the interest in the Common Areas and Facilities appertaining to any lot or the liability for Common Expenses appertaining thereto; (vi) the number or vote in the Association pertaining to any lot or (vii) the purposes to which any lot or the Common Elements are restricted.

13.9.2 Any casualty loss which affects a material portion of the Common Areas.

13.9.3 Any delinquency in the payment of assessments or charges owed by an Owner of a lot subject to the mortgage of such eligible holder, insurer or guarantor, where such delinquency has continued for a period of 60 days.

13.9.4 Any lapse, cancellation or material modification of any insurance policy maintained by the Association.

13.9.5 Any restoration or repair of the Common Areas after a partial condemnation or damage due to an insurable hazard shall be substantially in accordance with the Declaration and the original plans and specification unless the approval of the eligible holders of first mortgages on lots to which at least 51% of the votes of lots subject to mortgages held by such eligible holders are allocated, is obtained.

13.9.6 Unless the formula for reallocation of interest in the Common Areas after a partial condemnation or partial destruction of the Common Areas is fixed in advance by the Declaration or by applicable law, no reallocation of interests in the Common Areas resulting from a partial condemnation or partial destruction of the Common Areas may be effected without the approval of the eligible holders of first mortgages of lots to which at least 51% of the votes of lots subject to mortgages held by such eligible holders are allocated.

NOTE: As used in this section, the term "eligible holder, insurer or guarantor" shall mean a holder, insurer or guarantor of a first mortgage upon the lot.

14. Conveyances, Easements.

14.1 Each owner shall have the right to ingress and egress and reasonable enjoyment over, upon, and across the Common Areas and such rights shall be appurtenant to and pass with the title to each lot.

14.2 The Declarant shall have a transferable easement over and on the common Areas and Facilities for the purpose of completing construction of the Project and improvements therein as shown on the Map, and for the purpose of doing all things reasonably necessary or appropriate in connection therewith. Further, Declarant, together with home or lot owners of adjoining projects, shall have the right to use or to tie into, and an easement for the construction, connection and use of all utility service lines and any private road within the Project should the Declarant elect to connect into such utility lines or the private road with other public and/or private roads within the area. To the extent that damage is inflicted on any part of the Project by any person utilizing said easement, the Declarant or the person causing the damage, as applicable, shall be liable for the prompt repair of such damage.

14.3 The Association shall have the power to grant and convey to any third party and the Declarant hereby reserves unto itself, easements and rights of way, including but not limited to rights of ingress and egress, in, on, over and/or under the Common Areas and Facilities for the purpose of ordinary use including ingress and egress as well as for the purpose of constructing, erecting, operating or maintaining lines, cables, wires, conduits or other devices for electricity, cable, television, power, telephone and other purposes, public sewers, storm drains and pipe, water systems, sprinkling systems, water, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities to provide common utility services to the project, regardless whether such adjacent lands are subsequently annexed into the Project. Further, Declarant reserves unto itself, its tenants, assignees, and invitees, whether relative to this Project or Declarant's adjacent Projects a transferable easement over and upon the Common Areas and Common Facilities, access roads or similar property within the Project for the purpose of constructing, developing, maintaining, improving or expanding the Project, or any real property directly adjacent to the Project which may be subsequently developed by the Declarant, its successors or assigns with a perpetual easement of ingress and egress and enjoyment including the right to connect private roads upon the Project, or adjacent Projects

should such roads be constructed and connected. Such easement shall entitle Declarant the use of all access roads within the Project and to tie into all utility lines, sewage and drainage systems within or transversing the Project.

15. Amendment.

15.1 Except as otherwise provided in this Declaration, the provisions of this Declaration may be amended by an instrument in writing signed and acknowledged by Lot Owners who constitute a majority of the Lot Owners in the Association which amendment shall be effective upon recording.

15.2 Within twelve (12) months from the recording date hereof, Declarant reserves the right to amend the Declaration, in its sole discretion, or, if required by statute, or some other governmental agency or lending institution or to correct a technical error or to conform the Declaration to the development of the Project.

16. Assessments.

16.1 Power to Assess. The Association itself or through its Management Committee shall have the power and authority as set forth herein to make and collect regular and special assessments from the Lot Owners for their share of Common Expenses pursuant to this Declaration and the Articles and Bylaws and as further set forth below. All rights, powers and authority conferred hereunder to the Association shall also apply to the Management Committee as provided herein.

16.2 Agreement to Pay. Declarant, for each lot owned by it, covenants and agrees, and each purchase of a lot by his acceptance of a deed, covenants and agrees, for each lot so owned to pay to the Association regular assessments and special assessments, such assessments to be established, made and collected as provided in this Declaration. Each Lot Owner shall be liable for one twenty-first (1/21st) of the Common Expenses for each lot owned. Such assessments shall be accrued from the date the first lot is conveyed to a purchaser and will be due and payable in advance.

16.3 Personal Obligations. Each assessment or installment, together with any interest, collection costs and reasonable attorney's fees, shall be the personal obligation of the person or entity who was an Owner at the time such assessment, or installment, became due and payable. If more than one person or entity was the Owner of a lot, the personal obligation to pay such assessment, or installment, respecting such lot shall be both joint and several. The voluntary Grantee of a lot, by his acceptance of a Deed shall be subject to the terms and conditions of this Declaration, including personal liability for assessments. Any lien as provided hereunder shall continue to encumber the lot despite the lot's conveyance although there shall be no personal liability by a Lot Owner prior to he or she becoming a Lot Owner. No Lot

Owner may exempt himself from payment of assessments, or installments, by waiver of the use or enjoyment of all or any portion of the Common Areas and Facilities or by waiver of the use or enjoyment of, or by abandonment of his lot.

16.4 Purpose of Assessments; Maintenance of Reserves. The assessments levied by the Association shall be used exclusively to promote the improvement, replacement, repair, operation and maintenance of the Common Areas and Facilities and the performance of the duties of the Association as set forth in this Declaration. Assessments may also be used to cover expenses for repair of defects or failures in the Common Areas and Facilities. The regular assessments shall include adequate reserve funds for contingencies and for maintenance, repairs, and replacement of the Common Area improvements and facilities. This limitation shall not affect the liability of any supplier or manufacturer of any product included in the Development. Unless the Association is exempt from federal or state taxes, all reserves shall be accounted from as contributions to the capital of the Association and as trust funds segregated from the regular income of the Association or in any other manner authorized by law or regulations of the Internal Revenue Service and the Utah State Tax Commission that will prevent such funds from being taxes as income of the Association. Each lot's share of the working capital fund should be collected at the time the sale of the lot is closed and then transferred to the Association for deposit to a segregated fund.

16.5 Determination of Amount of Assessments.

16.5.1 Regular Assessments. Each Lot Owner shall pay the Association his allocated portion of the Common Expenses, as assessed, without any deduction on account of any set-off or claim which the Owner may have against the Association. If the lot Owner shall fail to pay any installment within thirty (30) days of the time when the same becomes due, the Owner shall pay interest thereon at the rate of eighteen percent (18%) per annum from the date when such installment shall become due to the date of the payment thereof.

16.5.2 Other Assessments. The cash requirement above referred to for each year, or portion of the year, are hereby defined and shall be deemed to include an adequate reserve fund for maintenance, repairs and replacement of those Common Areas and Facilities that must be replaced on a periodic basis, plus such aggregate sum as the Association or the Management Committee from time to time shall determine, in its judgment, is to be paid by all the Owners to enable the Association to pay all estimated expenses and outlays of the Association to the close of such year, growing out of or in connection with the maintenance and operation of such land and improvements; which sum may include, among other things, the cost of management, special assessments, fire, casualty, flood, fidelity, public liability and other insurance premiums, taxes, common lighting, landscaping and the care of the grounds, repairs and renovations to Common Areas and Facilities, wages, water charges, natural gas charges and all other utility services (except telephone, electricity and other services which are separately billed or metered to the individual lots by the utility or party furnishing such services), legal and

accounting fees, management fees, expenses and liabilities incurred by the Association under or by reason of this Declaration, the payment of any deficit remaining from the previous period the creation of a reasonable contingency or other necessary reserve or surplus fund, as well as all other costs and expenses relating to the Common Areas and Facilities. The Association or the management Committee may, from time to time, up to the close of the year for which such cash requirements have been so fixed or determined, increase or diminish the amount previously fixed or determined for such year. It may include in the cash requirements for any year, any liabilities or items or expense which accrued or became payable in the previous year, or which might have been included in the cash requirements for a previous year, but were not included therein; and also any sums which the Association may deem necessary or prudent to provide a reserve against liabilities or expenses then accrued or thereafter to accrue although not payable in that year.

16.5.3 Amount of Assessment. Each Lot Owner, by the acceptance of instruments of conveyance and transfer therefor, whether or not it be so expressed in said instruments, shall be deemed to covenant and agree with each other (and with any Homeowners Association involved) to pay all assessments made for the purposes of providing maintenance of the subsurface drain system serving the Subdivision. Unless otherwise specified herein, the fee assessed shall be a portion of the total maintenance costs representing the lot owner's prorate share. All sums assessed a Lot Owner within the Subdivision pursuant to the provisions hereof, together with the interest thereon as provided in these protective covenants, shall be secured by a lien on such lot in favor of the Lot Owners (or a homeowner association involved). To evidence a lien for sums assessed pursuant to this Section, the Lot Owners (or the Homeowners Association) shall prepare a written notice of lien setting forth the amount of the assessment, the due date, and amount remaining unpaid, the name of the Lot Owner and description of the lot. Such a notice shall be signed and acknowledged by a duly authorized officer of the Lot Owners (or Homeowners Association) and may be recorded in the office of the Davis County Recorder, State of Utah.

16.5.4 Maintenance and Operation. The Association through the Management Committee shall have discretionary powers to prescribe the manner of maintaining and operating the planned residential lot development and to determine the cash requirements of the Association to be paid as aforesaid by the Owners under this Declaration. Except as otherwise provided herein, every such reasonable determination by the Association within the bounds of this Declaration shall be final and conclusive as to the Owners, and any expenditures made by the Association, within the bounds of the Act and this Declaration shall as against the Owner be deemed necessary and properly made for such purpose.

16.5.5 Delegation. Subsurface drainage system assessments shall be assessed for those portions of the subsurface drainage system serving the subdivision which are located in public streets or dedicated public rights-of-way. Each lot owner

shall be solely responsible for maintenance of the subsurface drainage facilities on or beneath said lot owner's lot. The Lot Owners/Developer may elect to delegate their responsibilities for the subsurface drain system, including funding and maintenance of such system, to a non-profit corporation Homeowner's Association; provided however, such delegation shall not release or absolve the Lot Owners from their obligations to maintain and fund the sub-drain system in the event the Homeowner's Association should terminate at any time for any reason. The Lot Owners hereby covenant and agree with Centerville City that in the event the subsurface drainage system is not maintained and funded by the Lot Owners as provided herein above, that the City shall have the right to assess the property owners their prorated share of the costs of such maintenance on an annual basis and shall have the right to secure such assessments with a lien with interest thereon and to provide notice thereof in the manner provided above in these covenants.

16.6 Special Assessments. In addition to the annual regular assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that 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 upon the Common Area and Facilities including fixtures and personal property related thereto (but not during the development stage) provided that any such assessment shall have the vote or written assent of a majority of the Lot Owners of the Association. All proceeds from any special assessment shall be segregated and deposited into a special account and shall be used solely for the purpose or purposes for which it was levied or it shall be otherwise handled and used in a manner authorized by law or regulations of the Internal Revenue Service and the Utah State Tax Commission in order to avoid, if possible, its taxation as income of the Association.

16.7 Member Action. Any action authorized under Section 6 above requiring membership approval shall be taken at a meeting called for that purpose, written notice of which shall be sent to all Members not less than fifteen (15) days nor more than sixty (60) days in advance of the meeting. A quorum for such meeting shall be fifty-one percent (51%) of each class of members of the Association. 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 one-half (1/2) of the required quorum for the preceding meeting.

16.8 Uniform Rate of Assessment. A special assessment against members to raise funds for the repair or major rebuilding of a portion of the Common Areas and Facilities shall be based upon each Lot Owner being responsible for one twenty-first (1/21st) of the special assessment.

16.9 Assessment Period. The initial assessment period for all lots, including those owned by Declarant (other than those upon which lots have not yet been constructed or for which a Certificate of Occupancy has not been obtained) shall commence on the first day of the calendar month following the date on which the first sale of a lot to a purchaser is closed and recorded (the "initiation date") and shall terminate on December 31 of the year in which the initial sale is closed and recorded. Thereafter, the regular assessment period shall commence

on January 1 of each year and shall terminate on December 31 of such year, and regular assessments shall be payable in equal monthly installments unless the Management Committee adopts some other basis for collection. The Association shall not change the pro rate interest or obligation of any lot for purposes of levying assessments unless 75% of the Owners and Mortgagees holding 75% of all first Mortgages have given their prior written consent. Voting rights attributable to the respective lots shall not vest until assessments against such lots have been paid.

16.10 Notice and Assessment Installation Due Dates. A single thirty (30) days prior written notice of each annual regular assessment and each special assessment shall be given to the Owner of every lot subject to assessment in which the due dates for the payments of installments shall be specified. The due dates for the payment of installments normally shall be the first day of each month unless some other due date is established by the Management Committee. Each installment, regular assessment and special assessment shall become delinquent if not paid within thirty (30) days after its due date. There shall accrue with each delinquent installment a late charge which shall include any late charge previously assessed and unpaid, and which shall be computed on the outstanding balance from month to month as follows: one and one-half percent (1.5%) per month of any delinquent assessments.

16.11 Estoppel Certificate. The Association or the Management Committee, on not less than twenty (20) days' prior written request and upon the payment of a handling fee not exceeding \$50.00 per certificate, shall execute, acknowledge and deliver to the party making such request a statement in writing stating whether or not to the knowledge of the Association, a particular Owner is in default as to his lot assessments under the provisions of this Declaration and further stating the dates to which installments of assessments, regular or special, have been paid as to such lot. Any such certificate delivered pursuant to this Section may be relied on by any prospective purchaser or mortgagee of the lot. The Estoppel Certificate shall not supersede any default in the payment of regular or special assessments of which the requesting party had actual knowledge.

16.12 Lien. All sums assessed to any lot pursuant to this Declaration, together with interest, collection costs and attorney's fees as provided herein, shall be secured by a lien on such lot in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such lot, except only for: (i) valid tax and special assessment liens on the lot in favor of any governmental assessing authority; and (ii) a lien for all sums unpaid on a first Mortgage, or any Mortgage to Declarant, duly recorded in the Official Records of Davis County, Utah, including all unpaid obligatory advances to be made pursuant to such Mortgage and all amounts advanced pursuant to such Mortgage and secured by the lien thereof in accordance with the terms of such instruments. All other lienors acquiring liens on any lot after this Declaration shall have been recorded in said records shall be deemed to consent that such liens shall be inferior to future liens for assessments, as provided herein, whether or not such consent be specifically set forth in the instruments creating such liens.

To evidence a lien for sums assessed hereunder, the Association may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the lot and a description of the lot. Such a notice shall be signed by the Association, or its designee, and may be recorded in the office of the County Recorder of Davis County, Utah. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by judicial foreclosure by the Association in the same manner in which mortgages on real property may be foreclosed in Utah. In the event of foreclosure or any method of collection other than foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding, the costs and expenses of filing the notice of lien and all reasonable attorney's fees. All such costs, expenses and fees shall be secured by the lien being foreclosed. The Owner shall also be required to pay the Association any assessments against the lot which shall become due during the period of foreclosure. The Association shall have the right and power to bid an amount equal to its then existing lien at the foreclosure sale or other legal sale and to acquire, hold, convey, lease, rent, encumber, use and otherwise deal with the same as the Owner thereof.

A release of notice of lien shall be executed by the Association and recorded in the Office of the County Recorder of Davis County, Utah, upon payment of all sums secured by a lien (including costs and attorneys) which has been made the subject of a recorded notice of lien. Provided, however, a release of lien will be executed only if the Lot Owner is then fully paid up and current on all amounts owing to the Association.

Any encumbrancer holding a lien on a lot may pay, but shall not be required to pay, any amounts secured by the line created hereunder, and upon such payment such encumbrancer shall be subrogated to all rights of the Association with respect to such lien, including priority.

The Association may report to any encumbrancer of a lot any unpaid assessments remaining unpaid for thirty days after the same shall have become due; provided, however, that such encumbrancer first shall have furnished to the Association written notice of such encumbrance and shall request such notice of delinquency in writing.

16.13 **Foreclosure.** In any foreclosure of a lien for assessments, the Lot Owner subject to the lien shall be required to pay a reasonable rental for the lot, and the Association shall be entitled to the appointment of a receiver to collect the same.

16.14 **Capital Accounts.** The Association may include in the monthly assessments amounts representing contributions to the capital of the Association to be used for the replacement of or additions to capital items or improvements in the property, or for reserves for improvements to or replacement of capital items or improvements in or to the property. Said amounts shall be set up as capital accounts for each lot. In the event of transfer of a lot, the capital account shall be deemed transferred to the lot transferee.

16.15 **Capital Improvements.** In assessing the Lot Owners for capital improvements to the Common Areas and Facilities, for which there are not sufficient amounts in the respective capital accounts, there shall be no single improvement exceeding the sum of Five Thousand Dollars (\$5,000.00) made by the Association or the Management Committee without the same having been first voted on and approved by a majority of those present in person or by proxy of the Association at a meeting duly called for that purpose. The foregoing shall not apply in connection with damage or destruction hereof or to such structural alterations, capital additions to or capital improvements of the Common Areas and Facilities as are necessary in the Association's reasonable judgment to preserve or maintain the integrity of the Common Areas and Facilities of the property.

16.16 **Assignment of Rents.** If the Lot Owner shall, at any time, let or sublet his lot and shall default for a period of one month in the payment of assessments, the Association may, at its option, so long as any default shall continue, demand and receive from any tenant or subtenant of the owner the rent due or becoming due and the payment of such rent to the Association shall be sufficient payment and discharge of such tenant or subtenant and the owner to the extent of the amount so paid. The Lot Owner does hereby assign to the Association any such rent in the event of a default by Owner in paying an assessment.

17. **Notices.**

Any notice permitted or required to be delivered as provided herein may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed too be delivered twenty-four (24) hours after a copy of the same has been deposited in the U.S. Postal Service, postage prepaid, return receipt requested. Notice to Lot Owners shall be addressed to each lot owner at the address given by such Lot Owner to the Association for the purpose of service of such notice or to the lot of such Lot Owner if no such address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association. Notice to the Association will be addressed c/o Joel A. Anderson, 153 E. Rollinghills Dr., Centerville, Utah 84014.

18. **No Waiver.**

The failure of the Declarant, Association, Management Committee or any of their contractors to insist, in one or more instances, upon the strict performance of any of the terms, covenants, conditions, or restrictions of this Declaration or the Articles or Bylaws, or to exercise any right or option herein continued, or to serve any notice or to institute any action shall not be construed as a waiver or a relinquishment, for the future, of such term, covenant, condition or restriction; but such term, covenant, condition or restriction shall remain in full force and effect. The receipt and acceptance by the Association or its contractor of the payment of any assessment from a Lot Owner, with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver by the Association or the Management Committee of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Association.

19. Enforcement.

Each Lot Owner shall strictly comply with the provisions of the Declaration, the Articles, the Bylaws, the administrative rules and regulations and decisions issued pursuant thereto. Failure to so comply shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the Association or its designee on behalf of the Lot Owners, or in an appropriate case, by an aggrieved Lot Owner. Each Lot Owner shall be entitled to separately enforce the provisions of this Declaration, at its own expense.

20. Miscellaneous.

20.1 Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion hereof shall not affect the validity or enforceability of any other provision hereof.

20.2 Captions. The captions in this Declaration are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Declaration or the intent of any provision hereof.

20.3 Law Controlling. This Declaration, the Map, the Articles and the Bylaws shall be construed and controlled by and under the laws of the State of Utah.

20.4 Effective Date. This Declaration shall be effective as of the date of its recording.

20.5 Declarant's Rights Assignable. All of the rights of Declarant under this Declaration may be assigned or transferred either by operation of law or through a voluntary conveyance, transfer or assignment. Any mortgage covering all lots in the Project, title to which is vested in the Declarant, shall, at any given point in time and whether or not such Mortgage does so by its terms, automatically cover, encumber, and include all of the then unexercised or then unused rights, powers, authority, privileges, protections and controls which are accorded to Declarant (in its capacity as Declarant herein).

21. Agent for Service of Process.

The name and address of the person in David County, State of Utah, appointed as first agent to receive service of process for J.A. Anderson Construction, Inc., a Utah corporation, in matters pertaining to the property is: Joel a. Anderson, whose address is: 153 E. Rollinghills Dr., Centerville, Utah 84014.

IN WITNESS WHEREOF, the undersigned has executed this instrument on this 25 day of May, 1994.

J.A. ANDERSON CONSTRUCTION, INC., a Utah corporation

BY: Joel A. Anderson
JOEL A. ANDERSON
ITS: President

STATE OF UTAH)
COUNTY OF Harris) : ss. (Acknowledgement)

On the 25 day of May, 1994, personally appeared before me Joel A. Anderson, who being by me duly sworn did say that he is the President of J.A. Anderson Construction, Inc., a Utah corporation, and that the within and the forgoing instrument was signed on behalf of said corporation by authority of a resolution of its board of directors and said Joel A. Anderson duly acknowledged to me that said corporation executed the same.

Anna Rose Albrocht
NOTARY PUBLIC

