

03-228-0001 thru 0030

DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
AND RESERVATION OF EASEMENTS FOR  
INDIAN HILLS  
A CLUSTER HOUSING DEVELOPMENT SUBDIVISION

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
AND RESERVATION OF EASEMENTS is made this 24<sup>th</sup> day of April, 1998, by INDIAN  
HILLS, L.C. a Utah Limited Liability Company, Declarant:

RECITALS:

A. Description of Land. Declarant is the owner of certain property in the County  
of Box Elder, State of Utah, which is more particularly described in Exhibit "A" attached  
hereto and incorporated herein.

B. Owner's Association. Declarant has deemed it desirable, for the efficient  
preservation of the values and amenities in the real property described above ("Properties"),  
to create a non-profit corporation under the Utah Non-Profit Corporation and Cooperative  
Association Act to which should be delegated and assigned the powers of owning,  
maintaining and administering the Common Area and administering and enforcing the  
covenants and restrictions and collecting and disbursing the assessments and charges  
hereinafter created, which said corporation is sometimes hereafter referred to as the  
"Association".

C. Development. Declarant will develop and convey all of the Properties, as  
hereinafter defined, pursuant to a general plan for all of the Properties and subject to certain  
protective covenants, conditions, restrictions, reservations, easements, equitable servitudes,  
liens and charges, all running with the Properties as hereinafter set forth. No provision of  
this Declaration shall be construed as to prevent or limit Declarant's rights to complete  
development of the Properties and construction of improvements therein, nor Declarant's  
rights to maintain model homes, construction, sales or leasing offices or similar facilities on  
any property in the Properties owned by Declarant or the Association, nor Declarant's right to  
post signs incidental to construction, sales or leasing.

Each Owner of a Lot shall be members of the Association. Upon the elimination of  
the Class B Membership as provided herein, each of the Lots shall have one (1) vote in the  
Association. The common obligations shall be distributed in like percentages.

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D. Declaration. Declarant hereby declares that all of the Properties shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved, subject to the following easements, restrictions, covenants, conditions and equitable servitudes, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of the Properties, in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Properties, or any portion thereof. The covenants, conditions, restrictions, reservations, easements and equitable servitudes set forth herein shall run with the Properties and shall be binding upon all persons having any right, title or interest in the Properties or any part thereof, their heirs, successors and assigns and shall inure to the benefit of every portion of the Properties and any interest therein; and shall inure to the benefit of and be binding upon Declarant, its successors in interest and each Owner and his/her respective successors in interest; and may be enforced by any Owner and his/her successors in interest and by the Association.

## ARTICLE I DEFINITIONS

Unless otherwise expressly provided, the following words and phrases, when used herein, shall have the meaning hereinafter specified:

- 1.1 "*Architectural Committee*" shall mean the committee created pursuant to the terms herein.
- 1.2 "*Articles*" shall mean the Articles of Incorporation of the Association which have or will be filed in the office of the Utah Department of Commerce, Division of Corporations, and as such Articles may be amended, from time to time.
- 1.3 "*Assessment*" shall mean the charge against a particular Owner and his/her Lot, representing a portion of the total costs to the Association of maintaining, improving, repairing, replacing, managing and operating the Properties.
- 1.4 "*Special Assessments*" shall mean a charge against a particular owner and his/her Lot, directly attributable to the Owner for corrective action performed pursuant to the provisions of this Declaration, plus interest thereon as provided for in this Declaration.
- 1.5 "*Capital Improvement Assessment*" shall mean a charge against each owner and his/her Lot representing a portion of the costs to the Association for installation or construction of any improvements on any portion of the Common Area which the Association may from time to time authorize.

1.6 "*Association*" shall mean INDIAN HILLS OWNERS' ASSOCIATION, a corporation formed under the Utah Non-Profit Corporation and Cooperative Association Act, its successors and assigns.

1.7 "*Beneficiary*" shall mean mortgagee under a mortgage or a beneficiary or holder under a Deed of Trust, as the case may be and the assignees of such mortgagee, beneficiary or holder.

1.8 "*Board of Trustees*" shall mean the Board of Trustees of the Association, elected in accordance with the Bylaws of the Association.

1.9 "*Bylaws*" shall mean the Bylaws of the Association which have been or shall be adopted by the Board of Trustees, and as such Bylaws may be amended, from time to time.

1.10 "*Common Area*" shall mean all the real property and improvements, including without limitation, any landscaped areas, walkways, water and water rights under Weber - Box Elder Conservation District, a political subdivision of the State of Utah and an irrigation water distribution system, and sanitary storm sewer facilities, fences and easements and rights-of-way appurtenant to the Properties which are owned by the Association for the common use and enjoyment of the Owners of Lots. Provided, however, the driveways are limited Common Areas, the use of which is reserved to the owners of the separate Lots to which they are contiguous. The Common Area to be so owned by the Association at the time of the conveyance of the first Lot shall also include the property located in the County of Box Elder, State of Utah which is described in Exhibit "B" and incorporated herein.

1.11 "*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), including those costs not paid by the owner responsible for payment, costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to manager, accountants, attorneys and other employees, the costs of all utilities, gardening and other services benefiting the Common Area and all recreational facilities thereon; the costs of fire, casualty and liability insurance, workmen's compensation insurance and other insurance covering the Properties and the costs of bonding the members of the management body; taxes paid by the Association; amounts paid by the Association for discharge of any lien or encumbrance levied against the Properties or portions thereof; and the costs of any other item or items designated by or in accordance with other expenses incurred by the Association for any reason whatsoever in connection with the Properties, for the benefit of all of the Owners of Lots.

1.12 "*Declarant*" shall mean and refer to INDIAN HILLS, L.C., a Utah Limited Liability Company, its successors and assigns, so long as Declarant assigns such rights of Declarant hereunder to any person by an express written assignment.

1.13 "*Declaration*" shall mean and refer to this instrument as it may be amended from time to time.

1.14 "*Dwelling Unit*" shall mean and refer to a building located on a Lot designed and intended for the use and occupancy as a residence by a single family.

1.15 "*Improvement*" shall mean all structures and appurtenances of every type and kind, including but not limited to buildings, out buildings, walk-ways, sprinkler pipes, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior air conditioning and water softener fixtures or equipment.

1.16 "*Properties*" shall mean and refer to all of the real property described in paragraph A of the Recitals to this Declaration.

1.17 "*Lot*" shall mean and refer to any residential Lot or parcel of land shown upon any recorded Subdivision plat of INDIAN HILL, with the exception of the Common Area.

1.18 "*Member*" shall mean any person or entity holding a membership in the Association as provided herein.

1.19 "*Mortgage*", "*Mortgagee*" shall mean any mortgage or Deed of Trust or other conveyance of a Lot 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 herein, shall be synonymous with the term "Mortgage". The term "Mortgagee", shall mean a person or entity to whom a mortgage is made and shall include the beneficiary of a Deed of Trust; "Mortgagor" shall mean 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 "Trustor" shall be synonymous with the term "Mortgagor" and the term "Beneficiary" shall be synonymous with the term "Mortgagee".

1.20 "*Owner*" shall mean and refer to the person or persons or other legal entity or entities, including Declarant, holding fee simple interest of record to any Lot which is part of the Properties, including sellers under executory contract of sale, but excluding those having such interest merely as security for the performance of an obligation.

ARTICLE II  
OWNER'S PROPERTY RIGHTS

2.1 Owner's Easements of Enjoyment. Every 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 every Lot and unit, subject to the following provisions:

(a) The right of the Association to reasonably limit the number of guests of Owners using the Common Area facilities.

(b) The right of the Association to establish uniform rules and regulations pertaining to the use of the Common Area, including but not limited to, the right and obligation of the Association to enforce all parking restrictions within the Common Area as set forth herein.

(c) The right of the Association, in accordance with its Articles of Incorporation, Bylaws, and this Declaration, with the vote of or written assent of a majority of each class of members (excluding therefrom the voting power of the Declarant), to borrow money for the purpose of improving the Common Area, and subject to the provisions of this Declaration, to mortgage, pledge, deed in trust or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, provided that the rights of such mortgagee shall be subordinated to the rights of the Owners.

(d) The right of the Association to suspend the voting rights and right to use the Common Area by an owner for any period during which any assessment against his/her Lot remain 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 right to use the Common Area shall be made only by the Board of Trustees of the Association, after notice and an opportunity for a hearing as provided in the Bylaws of the Association.

(e) With the consent of the City of Perry or other applicable governmental authorities and subject to the provisions of this Declaration, the Association shall have the right 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 an instrument signed by members entitled to cast a majority of the voting power of the Class A Members (excluding the voting power of the Declarant), agreeing to such dedication, release, alienation, or transfer has been recorded.

(f) The right of the Declarant (and its sales agents, customers, and representatives) to the non-exclusive use of the Common Area and any facilities thereof (if applicable), without charge, for sales, display, access, ingress, egress and exhibit purposes, which right Declarant hereby reserves; provided, however, that such use shall not be for a period of more than five (5) years after the date of recording of this Declaration. Upon the request of Declarant and upon the vote of a majority of voting power of the Class A Members, this term may be extended for an additional period of time.

(g) The right of the Association (by action of the Board of Trustees) 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 improvements, or of the general improvements within the Properties, 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 the Owners holding a majority of the voting power of the Association.

(h) The right of the Association to replace destroyed trees or other vegetation and plant trees, shrubs and ground cover upon any portion of the Common Area.

2.2 Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his/her right of enjoyment to the Common Area to the members of his/her family, his/her tenants or contract purchasers who reside in his/her dwelling unit, subject to reasonable regulation by the Board of Trustees.

2.3 Easements for Parking. If applicable, temporary guest or recreational parking 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 these parking limitations by all means lawful for such enforcement, including the removal of any violating vehicle by those so empowered.

2.4 Easements for City and County Use. In addition to the foregoing easements over the Common Area, there shall be, and Declarant hereby reserves and covenants for itself and all future Owners, easements for city, county, state and federal public services, including but not limited to, the right of the police to enter upon any part of the Common Area for the purpose of enforcing the laws and permanent easement in favor of Perry City pursuant to the ordinances of the Perry City to guarantee that the open spaces remain perpetually in the uses for which intended.

2.5 Waiver of Use. No Owner may exempt himself from personal liability for assessments duly levied by the Association nor release the Lot or other property owned by him from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area and the facilities thereon, or by abandonment of his/her Lot or any other property in the Properties.

2.6 Taxes. Each Owner shall execute such instruments and take such action as may be reasonably specified by the Association to obtain separate real estate tax assessments on each Lot. If any taxes or assessments may, in the opinion of the Association, nevertheless be a lien on more than one Lot 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/her own Lot and interest, if any, in the Common Area.

2.7 Real Property Taxes. The payment of real property taxes assessed against the Common Area is the responsibility of the Association. Provided, however, if for any reason the same are not timely paid, the payment of the taxes shall be the responsibility of and assessed against the Owners of the Lots, on a prorate basis.

### ARTICLE III MEMBERSHIP IN THE ASSOCIATION

3.1 Membership. Every Owner of a Lot shall be a member of the Association. memberships in the Association shall not be assignable, except to the successor in interest of the Member, and every membership in the Association shall be appurtenant to and may not be separated from the fee ownership of such Lot.

3.2 Transfer. The Association membership held by any Owner of a Lot shall not be transferred, pledged, or alienated in any way, except upon the sale or encumbrance of such Lot and then only to the purchaser or mortgagee of such Lot. 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 his/her Lot to a contract purchaser under an agreement to purchase shall be entitled to delegate to such contract purchaser his/her membership rights in the Association. Such delegation shall be in writing and shall be delivered to the Board of Trustees before such contract purchaser may vote. However, the contract seller shall remain liable for all charges and assessments attributable to his/her Lot until fee simple title to the Lot sold is transferred. In the event the Owner of any Lot shall fail or refuse to transfer the membership registered in his/her name to the purchaser of such Lot upon transfer of fee title thereto, the Board of Trustees shall have the right to record the transfer upon the books of the Association. The Board of Trustees shall have the right to

charge a reasonable Special Assessment against any Owner and his/her Lot, equal to the cost to the Association of effectuating any such transfer of his/her membership upon the books of the Association.

ARTICLE IV  
VOTING RIGHTS

4.1 Voting Rights. The Association shall have two (2) classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned.

Class B. The Class B member(s) shall be the Declarant (as defined in the Declaration), and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) Five years from the date on which this Declaration is recorded,  
or

(b) After Units to which ninety percent (90%) of the undivided interest in the Common Areas appertain have been conveyed.

4.2 Amplification. The provisions of this Article may be amplified by the Articles of Incorporation and Bylaws of the Association.

ARTICLE V  
DUTIES AND POWERS OF THE ASSOCIATION

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

(a) Maintain, repair and otherwise manage the Common Area and all facilities, improvements and landscaping thereon in accordance with the provisions of this Declaration.

(b) Maintain all private sewer systems within the Common Area.



- (c) Pick up and dispose of garbage, or arrange for the pick up and disposal of garbage by public agencies, or contract for the pick up and disposal of garbage by contract with private agencies.
- (d) Grant easements, rights-of-way or strips of land, where necessary, for utilities and sewer facilities over the Common Area to serve the Common Area and the Lots.
- (e) Maintain such policy or policies of liability and fire insurance with respect to the Common Area and personal property, if any, owned by the Association as provided herein in furthering the purposes of and protecting the interests of the Association and Members and as directed by this Declaration and the Bylaws of the Association.
- (f) Employ or contract with a professional manager to perform all or any part of the duties and responsibilities of the Association including the power to delegate its powers to committees, officers and employees. Any such agreement shall be for a term of not in excess of three (3) years, subject to cancellation by either party without cause or payment of a termination fee upon ninety (90) days or less written notice.
- (g) After fifteen (15) days written notice, without being liable to any Owner, enter upon any Lot for the purpose of enforcing, by peaceful means, the provisions of this Declaration or for the purpose of maintaining or repairing any such area if for any reason whatsoever the Owner thereof fails to maintain or repair any such area as required by this Declaration, all at the cost and expense of the Lot Owner, which said cost and expense shall be a lien upon said Owner's Lot.
- (h) From time to time promulgate rules and regulations which shall be binding upon the Owners of the Lots.
- (i) Do and perform any and all things as may be convenient or necessary in connection with the Properties.

ARTICLE VI  
COVENANTS FOR MAINTENANCE ASSESSMENT

6.1 Creation of the Lien and Personal Obligations of Assessments. Each owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (1) annual assessments for common expenses; (2) capital improvement assessments; (3) special assessments; and (4) reconstruction assessments; such assessments to be established and collected as hereinafter provided. Such assessments, together with interest, costs and reasonable attorney's fees for the collection thereof, shall be a charge on the land and shall be a continuing lien upon the

property 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 property at the time when the assessment fell due. Subject to 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 of Trustees shall establish no fewer than two (2) such separate accounts ("Indian Hills Maintenance Funds") into which shall be deposited all monies paid to the Association and from which disbursements shall be made, as provided herein, in the performance of functions by the Association under the provisions of this Declaration. Each of the Maintenance Funds shall include: (1) an Operating Fund for current expenses of the Association; and (2) a Common Area Reserve Fund for replacements, painting and repairs (which would not reasonably be expected to recur on an annual or less frequent basis) of the Common Area facilities to the extent necessary under the provisions of this Declaration. The Board of Trustees shall not co-mingle any amounts deposited into any of the INDIAN HILLS Maintenance Funds with one another.

6.2 Purpose of Assessments. The assessments levied by the Association shall be used to promote the common health, safety, benefit, recreation and welfare of the Owners and for the improvements and maintenance of the Common Area, exterior maintenance, drainage system, storm drain system and of the dwelling units situated upon the Lots in the Properties as provided herein.

The Association shall be responsible for the exclusive management, control and maintenance of the sub-surface drainage system serving the Properties. The annual assessment shall include the amount sufficient to cover on-site and off-site maintenance of the sub-surface drain system and relocated parts thereof serving the Properties. The sub-surface drainage system assessments shall be assessed for those portions of the subsurface drainage system serving the Properties which are located in public streets or dedicated public rights-of-way (provided, however, each Lot Owner shall be solely responsible for maintenance of the sub-surface drainage facilities or beneath said Lot Owner's Lot).

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 property and exterior maintenance that must be replaced on a periodic basis. However, disbursements from the Common Area Reserve Fund shall be made by the Board of Trustees only for the specific purpose specified in this Article. Disbursements from the Operating Fund shall be made by the Board of Trustees 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 Common Area 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 Properties. Nothing contained herein shall limit, preclude or impair the establishment of additional Indian Hills Maintenance Funds by the Association, so long as the amounts deposited into any such fund are earmarked for specified purposes authorized by this Declaration.

6.3 Damage to Common Area by Owner. The foregoing maintenance, repairs or replacements within the Common Area arising out of or caused by the willful or negligent act of the Owner, his/her family, guests or invitee, shall be done at said Owner's expense or a Special Assessment therefor shall be made against his/her Lot; provided, however, that the liability of an individual Owner for such damage to the Common Area shall not be absolute, but shall only be that for which the Owner is legally responsible under state law.

6.4 Capital Improvement and Reconstruction Assessments. In addition to the Assessments authorized above, the Board of Trustees may levy, in any assessment year, a Capital improvement Assessment or Reconstruction 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 or other such addition upon the Common Area, including fixtures and personal property related thereto.

6.5 Uniform Rate of Assessment. Assessments, Capital Improvement Assessments and Reconstruction Assessments provided for in this Article must be fixed at a uniform rate for all Lots within the Properties; provided, however, that the Association may, subject to the provisions of this Article, levy Special Assessments against selected Owners who have caused the Association to incur special expenses due to willful or negligent acts of said Owners, their guests or agents. All Assessments shall be collected on a regular basis by the Board of Trustees, at such frequency as the Board of Trustees shall determine.

6.6 Date of Commencement of Assessments; Due Date. The annual assessment shall commence six (6) months after commencement of construction of the improvements as to the property of each plat. The first annual Assessment shall be adjusted according to the number of months remaining in the fiscal year as set forth in the Bylaws. The Board of Trustees shall fix the amount of the annual Assessment against each Lot at least thirty (30) days in advance of each Assessment period. Written notice of any change in the amount of the annual 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 of Trustees. 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 Lot have been paid. A properly executed certificate of the Association as to the status of assessments against a Lot is binding upon the Association as of the date of its issuance.

The Board of Trustees 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 Common Area 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 of Trustees, in the manner provided in the Bylaws of the Association. At least sixty (60) days prior to the beginning of each fiscal year, the Board of Trustees shall prepare and distribute to the Membership of the Association, 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 Common Area Reserve Fund, less any expected income and accounting for any surplus from the prior year's respective Indian Hills Maintenance Fund).

Each annual 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 Common Area Reserve Fund, the Operating Fund and any other maintenance fund established by the Association. If the estimated sums prove inadequate for any reason, including non-payment of any Owner's annual Assessment, the Board of Trustees may, at any time, levy supplemental Assessments subject to provisions of this Article, for any of the Maintenance Funds which shall be assessed equally against the Owner of each Lot in the Properties.

Each annual assessment may be paid 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 installment of an 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 by the Association from that Owner shall be credited in order of priority, first to the Operating Fund, until that portion of the Assessment has been satisfied and second, to the Common Area 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 Properties, may be returned to the Members proportionately, or may be retained by the Association and used to reduce the following year's Assessments. Notwithstanding anything contained in the Articles or Bylaws 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 Common Area Reserve Fund shall be distributed to or for the benefit of the Members in a proportion equal to their individual, respective contributions.

6.7 Exempt Property. The following property, subject to this Declaration, shall be exempt from the assessment herein:

- (a) All properties dedicated to and accepted by a local public authority; and
- (b) The Common Areas.

ARTICLE VII  
EFFECT OF NON-PAYMENT OF ASSESSMENTS;  
REMEDIES OF THE ASSOCIATION

7.1 Effect of Non-Payment of Assessments; Remedies of The Association. Any installment of an 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 therefor may be required further by the Board of Trustees to pay a late charge of FIFTEEN (\$15.00) DOLLARS or ten percent (10%) of the amount of the delinquent installment, whichever is greater. Any validly imposed Assessment, Capital Improvement Assessment, Special Assessment or Reconstruction Assessment, by the Association shall constitute a lien against lots in the subdivision. The Association may bring an action at law against the Owner, personally obligated to pay the same, or foreclose the lien against the Lot. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his/her Lot. If any installment of an Assessment is not paid within thirty (30) days after its due date, the Board of Trustees shall mail an acceleration notice to the Owner and to each first mortgagee of a Lot 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 of the balance of the installments of the Assessment for the then current fiscal year and sale of his/her Lot. The notice shall further inform the Owner of his/her right to cure after acceleration and to bring a court action to assert the nonexistence of a default or any other defense of the owner to acceleration and sale. If the delinquent installments of Assessments and any charges thereon are not paid in full on or before the date specified in the notice, the Board of Trustees, at its option, may declare all of the unpaid balance payable without further demand and may enforce the collection of the full Assessment and all charges thereon in any manner authorized by law and this Declaration.

7.2 Notice of Assessment. No action shall be brought to enforce any assessment lien 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 Lot and a copy thereof has been recorded by the Association in the office of the County Recorder in which the Properties are located; said Notice of Assessment must recite a good and sufficient legal description of any such Lot, 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 claimant. 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.

7.3 Foreclosure Sale. Any such sale provided for above may be conducted by the Board of Trustees, its attorneys or other persons authorized by the Board of Trustees in accordance with the applicable law to the exercise of powers of sale in mortgages and 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 Lot at foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

7.4 Curing of Default. Upon the timely curing of any default for 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 SEVENTY FIVE (\$75.00) DOLLARS to cover the cost of preparing and recording such release. A certificate executed and acknowledged by any two (2) members of the Board of Trustees stating the indebtedness secured by the liens upon any Lot 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 FIFTEEN (\$15.00) DOLLARS.

7.5 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.

7.6 Subordination of the Lien to Mortgage. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage (meaning any recorded mortgage with first priority or seniority over 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 Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or deed in lieu thereof, shall extinguish the lien of such assessments as

to installments which became due prior to such sale or transfer. However, no sale or transfer shall relieve such Lot from liability for any installments of assessments thereafter becoming due or from the lien thereof.

ARTICLE VIII  
ARCHITECTURAL CONTROL

8.1 Members of Committee. The Architectural Committee, sometimes referred to in this Declaration as the "Committee" shall consist of three (3) members. The initial members of the Committee shall consist of representatives of Declarant. Each of said persons shall hold office until the election of the first Board of Trustees by the membership of the Association. Thereafter, new members of the Committee shall be appointed by the Board of Trustees and shall hold office until such time as he has resigned or has been removed or his/her successor has been appointed, as provided herein. Members of the Committee may be removed at any time without cause. The Board of Trustees shall have the right to appoint and remove all members of the Committee.

8.2 Review of Proposed Construction. Subject to provisions of this Declaration and the Development Guide, no building, fence, wall, patio cover or other structure shall be commenced, painted, erected or maintained upon the Properties, 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 by the Architectural Committee. The Committee may also issue rules or guidelines setting forth procedures for the submission 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 Committee may provide that the amount of such fee shall be uniform, or that it be determined in any other reasonable manner, such as by the reasonable cost of the construction, alterations or additions contemplated, provided that in no event shall such fee exceed FIVE HUNDRED (\$500.00) DOLLARS. The Committee may require such detail in plans and specifications submitted for its review as it deems necessary and proper, including, without limitation, floor plans, site plans, drainage plans, elevation drawings and description or samples of exterior materials and colors. Until receipt by the Committee of any required plans and specifications, the Committee may postpone review of any plans submitted for approval.

8.3 Meetings of the Committee. The Committee shall meet, from time to time, as necessary to perform its duties hereunder and shall complete its review and report of proposed construction within thirty (30) days after submittal of a request. The 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 Committee, except the granting of variances

pursuant to the provisions hereof. 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.

8.4 No Waiver of Future Approvals. The approval of the Committee to 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 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 whoever subsequently or additionally submitted for approval or consent.

8.5 Inspection of Work. Inspection of work and correcting of defects therein shall proceed as follows:

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

(b) Within sixty (60) days thereafter, the Committee, or its duly authorized representative, may inspect such improvement. If the Committee finds that such work was not done in substantial compliance with the approved plans, it shall notify the Owner, in writing, of such non-compliance within such sixty (60) day period, specifying the particulars of non-compliance 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 non-compliance, the Committee shall notify the Board of Trustees, in writing, of such failure. Upon notice and hearing, the Board of Trustees shall determine whether there is a noncompliance and if so, the nature thereof and the estimated cost of correcting or removing the same. If a non-compliance 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 of Trustees ruling within such period. The Board of Trustees, at its option, may either remove the non-complying improvement or remedy the non-compliance 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 of Trustees shall levy a Special Assessment against such Owner for reimbursement.

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

8.6 Non-liability of Committee Members. Neither the 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 Committee's duties hereunder, unless due to the willful misconduct or bad faith of the Committee. The Committee shall review and approve or disapprove all plans submitted to it for any proposed improvement, alteration or addition, solely on the basis of aesthetic considerations and the overall benefit or detriment which would result to the immediate vicinity and the Properties generally. The 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 plans or designs be deemed approval of any plans or designs from the standpoint of structural safety or conformance with buildings or other codes.

8.7 Variance. The Committee may authorize variances from compliance with any of the architectural provisions of this Declaration or any Supplemental Declaration. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration or of any Supplemental Declaration for any purpose except as to the particular 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 his/her use of the premises, including but not limited to, zoning ordinances and lot set back lines or requirements imposed by any governmental or municipal authority.

ARTICLE IX  
MAINTENANCE AND REPAIR OBLIGATIONS

9.1 Structural Maintenance Areas. No improvement, excavation or work which in any way alters the Structural Maintenance Areas from their natural or existing state on the date any such area is conveyed by Declarant to a purchaser of a Lot shall be made or done by any person other than the Association or its authorized agents. The Association shall maintain or provide for the maintenance in good order and repair and shall reconstruct, replace or refinish the improvements within the Structural Maintenance Areas.

9.2 Exterior Maintenance. In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder as follows: paint, repair, replacement and care of roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks and other exterior improvements. Such exterior maintenance shall not include glass surfaces.

In the event that the need for maintenance or repair of a Lot or the improvements thereon is caused through the willful or negligent acts of its Owner, or through the willful or negligent acts of the family, guests or invitee of the Owner of the Lot needing such

maintenance or repair, the cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject.

9.3 Maintenance Obligation of Association. Subject to the provisions of this Article, the Association shall maintain or provide for the maintenance, of all Common Areas and all improvements thereon, including fences, entrance gates, streets, sidewalks, Common Area landscaping, landscaping equipment and lighting and utility mains, and any and all utility laterals to the lot lines.

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

9.5 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/her residence 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 reconstruction's and the end result thereof. The Architectural Committee shall grant such approval only if the design proposed by the Owner should result in a finished residence as in harmony with exterior design of other residences on the Properties. Failure of the Architectural Committee to act within thirty (30) days after receipt of such a request in writing coupled with the drawings and plot 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.

9.6 Time Limitation. The Owner or Owners of any damaged residence, 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, unless prevented by causes beyond their reasonable control.

#### ARTICLE X USE RESTRICTIONS

All real property within the Properties shall be held, used and enjoyed subject to the following limitations and restrictions, except as to the exemption of Declarant herein:

10.1 Single Family Residence. Each Lot unit and lot shall be used as a residence for a single family residence and for no other purpose.

10.2 Business Uses. No portion of the Subdivision may be used for any commercial business use; provided however, that nothing in this provision is intended to prevent (a) the Declarant from using one or more Lots or Units for purposes of a construction office or sales office, or (b) the use by any Owner of his Lot for a home occupation. No home occupation will be permitted, however, which requires or encourages the Owner's clients, customers, patients or others to come to the Lot to conduct business, or which requires any employees outside of the Owner's immediate family or household. No retail sales of any kind may be made in the Subdivision. No materials, machinery, equipment, or inventory associated with any home occupation may be stored outside on any Lot. No signs associated with any home occupation are permitted. All use must be in conformance with Perry City ordinances.

10.3 Nuisances. No noxious or offensive activity (including but not limited to the repair of motor vehicles) shall be carried on, in or upon any Lot or the Common Area nor shall anything be done therein which may be or become an unreasonable annoyance or a nuisance to any other Owner. No loud noises or noxious odors shall be permitted on the Properties and the Board of Trustees shall have the right to determine, in accordance with the Bylaws, if any noise, odor or activity producing such noise, 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 other items which may unreasonably interfere with television or radio reception of any Owner in the Properties, or exposed to the view of other Owners without the prior written approval of the Architectural Committee.

10.4 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 Properties or any Lot, without the prior written consent of the Architectural Committee, except for one sign for each dwelling unit of not more than three (3) feet by two (2) feet, plain white or black block letters, advertising the property for sale or rent, or except signs, regardless of size, used by Declarant, its successors or assigns, to advertise the Properties during construction and sales periods. All signs or billboards and the condition promulgated for the regulation thereof shall conform to the requirements of the Perry City Ordinances.

10.5 Parking and Vehicular Restrictions. No Owner of any Lot shall park, store or keep any vehicle except wholly within the parking area designated therefor and any inoperable vehicle shall be stored only in garages. No Owner shall park, store or keep on any property or street (public or private) within the Properties, any camper type or small truck,

large commercial type vehicle (dump truck, cement mixer truck, delivery truck and any other vehicular equipment, mobile or otherwise, deemed to be a nuisance by the Board of Trustees), any recreational vehicle (camper unit, motor home, truck, trailer, boat, mobile home or other similar vehicle) upon any uncovered parking space, so as to be visible from anywhere in the Properties, except as otherwise provided by the Board of Trustees. The above excludes campers or small trucks up to and including three quarter ton (3/4) when used for every day type transportation, which may be parked in a driveway or garage. No Owner of a Lot shall conduct major repairs or major restoration of any motor vehicle, boat, trailer, aircraft or other vehicle upon any portion of any Lot or upon the Common Area. Provided, however, recreational vehicles may be temporarily parked, from time to time, for periods not to exceed seventy-two (72) hours for purposes of loading, unloading and cleaning.

10.6 Animal Restrictions. No animals, livestock, reptiles or poultry of any kind shall be raised, bred or kept on any Lot or the Common Area, except usual and ordinary dogs, cats, fish, birds and other household pets may be kept on Lots, subject to rules and regulations adopted by the Association, provided that they are not kept, bred or maintained for commercial purposes or in unreasonable quantities. As used in this Declaration, "unreasonable quantities" shall ordinarily mean more than two (2) pets per household, provided, however, that the Association (or the Architectural Committee or such other person or entity as the Association may, from time to time designate) may determine that a reasonable number in any instance may be more or less. The Association, acting through the Board of Trustees, shall have the right to prohibit maintenance of any animal which constitutes, in the opinion of the Board of Trustees, a nuisance to any other Owner. Animals belonging to Owners, occupants or their licensees, tenants or invitee within the Properties must be either kept within an enclosure, an enclosed patio or on a leash being held by a person capable of controlling the animal. The enclosure must be so maintained that the animal cannot escape therefrom and shall be subject to the approval of the Architectural Committee. Should any animal belonging to an Owner be found unattended out of the enclosure and not being held on a leash by a person capable of controlling the animal, such animal may be removed by Declarant (for so long as it owns any interest in the Properties) or a person designated by the Declarant to do so, to a shelter under the jurisdiction of the local municipality in which the Properties are situated and subject to the laws and rules governing said shelter, or to a comparable animal shelter. Furthermore, any Owner shall be absolutely liable to each and all remaining owners, their families, guests, tenants and invitee, for any unreasonable noise or damage to person or property caused by any animal brought or kept upon the Properties by an Owner or by members of his/her family, his/her tenants or his/her guests; and it shall be the absolute duty and responsibility of each such Owner to clean up after such animal which have used any portion of the Common Area.

10.7 Trash. No rubbish, trash, garbage or other waste material shall be kept or permitted upon any Lot or Common Area, except in sanitary containers located in

appropriate areas screened and concealed from view, and no odor shall be permitted to arise therefrom so as to render the Properties, or any portion thereof, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. There shall be no exterior fires whatsoever except barbecue fires contained within receptacles therefor and fire pits in the patios designed in such a manner that they do not create a fire hazard. No clothing or household fabrics shall be hung, dried or aired in such a way in the Properties as to be visible to other property and no lumber, grass, shrub or tree clippings or plant waste, metals, bulk material or scrap or refuse or trash shall be kept, stored or allowed to accumulate on any portion of the Properties except within an enclosed structure or appropriately screened from view.

10.8 View Obstructions. No fence, hedge, wall or other dividing instrumentality over six (6) feet in height measured from the ground on which it stands shall be constructed or maintained on any Lot, except that Declarant may vary or exceed said height or location of any fence in accordance with its architectural plans. Each Owner, by accepting a deed to a Lot, hereby acknowledges that any construction by Declarant may impair the view of such Owner and hereby consents to such impairment.

10.9 Temporary Buildings. No outbuilding, basement, tent, shack, shed or other temporary, building or improvement of any kind shall be placed upon any portion of the Properties, either temporarily or permanently. No garage, trailer, camper, motor home or recreational vehicle shall be used as a residence in the Properties, either temporarily or permanently.

10.10 Common Area Facilities. Nothing shall be altered or constructed in or removed from the Common Area except upon written consent of the Association.

10.11 Declarant Exemption. Declarant or its successors or assigns will undertake the work of constructing dwelling units and developing all of the Lots included within the Properties 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 said 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 Lots improved with completed dwelling units. In order that said work may be completed and the Properties 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 Declarant, its successors or assigns, or its or their contractors or subcontractors, from doing, on any Lot owned by them, whatever they determine to be necessary or advisable in connection with the completion of said work, including, without

limitation, the alteration of its construction plans and designs as Declarant deems advisable in the course of development; or

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

(c) Prevent Declarant, its successor or assigns, or its or their contractors or subcontractors, from constructing on any Lot or any portion thereof, owned or controlled by Declarant, or its successors or assigns, its or their business of developing, subdividing, grading and constructing dwelling units and other improvements on the Properties as a residential community and of disposing of dwelling units thereon by sale, lease or otherwise; or

(d) Prevent Declarant, its successors or assigns, or its or their contractors or subcontractors, from maintaining such sign or signs on any Lot owned or controlled by any of them as may be necessary in connection with the sale, lease or other marketing of Lots and dwelling units in the Properties; or

(e) Prevent Declarant, at any time prior to acquisition of title to a Lot in a subdivision by a purchaser from Declarant, to establish on that subdivision 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 Properties.

10.12 Outside Installation. No radio station or short-wave operators of any kind shall operate from any Lot or dwelling unit unless approved by the Board of Trustees. Exterior radio antenna, satellite dishes, television antenna or other antenna may be erected or maintained in the Properties, subject to the written approval of the Architectural Committee.

10.13 Insurance Rates. Nothing shall be done or kept in the Properties which will increase the rate of insurance on any property insured by the Association without the approval of the Board of Trustees nor shall anything be done or kept in the Properties which would result in the cancellation of insurance on any property insured by the Association or which would be in violation of any laws.

10.14 Drilling. 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 or mineral excavations or shafts be permitted upon the surface of any Lot or within five hundred (500') feet below the surface of the Properties. No derrick or other structure designed for use in boring for water, oil or natural gas shall be erected, maintained or permitted upon any Lot.

10.15 Further Subdivision. No Owner shall further partition or subdivide his/her Lot; provided, however, that this provision shall not be construed to limit the right of an owner to: (a) rent or lease all or any portion of his/her Lot by means of a written lease or rental agreement subject to the restrictions of this Declaration, so long as the Lot is not leased for transient or hotel purposes; (2) sell his/her Lot; or (3) transfer or sell any Lot to more than one person to be held by them as tenants in common, joint tenants, tenants by the entirety or as community property. The terms of any such lease or rental agreement shall be subject, in all respects, to the provisions of this Declaration and the Bylaws of the Association and any failure by the Lessee of such Lot to comply with the terms of the Declaration or the Bylaws of the Association shall be a default under the lease.

10.16 Drainage. There shall be no interference with the established drainage pattern over any subdivision within the properties, unless an adequate alternative provision is made for proper drainage and is first approved in writing by the Architectural Committee. For purposes thereof, established drainage is defined as the drainage which exists at the time the overall grading of any subdivision is completed by Declarant that which is shown on any plans approved by the Architecture Committee which may include drainage from the Common Area over any Lot or Lots in the Properties.

10.17 Water Supply Systems. No individual waste supply, sewage disposal system or water softener system shall be permitted on any Lot in the Properties unless such system is designed, located, constructed and equipped in accordance with the requirements, standards and recommendations of the Perry City Water Department, the Architectural Committee and all other applicable governmental authorities.

10.18 Detention Basin and Drainage. Easements over the properties for the installation, improvement or maintenance of detention basins or drainage facilities are hereby reserved by Declarant, its successors and assigns, together with all right to grant and transfer the same. The detention basins and drainage channels must be maintained in an operating condition at all times for flood control and drainage purposes. property owners shall not fill these basins or otherwise render them inoperable.

ARTICLE XI  
FENCES

There shall be no fences or walls within or on the Properties except the fence and/or wall around the perimeter of the Properties and party walls, except as approved in writing by the Architectural Committee.

ARTICLE XII  
INSURANCE

12.1 Types of Insurance. The Association shall obtain and keep in full force and effect at all times the following types of insurance coverage, provided by companies licensed to do business in the State of Utah.

(a) Master Property Insurance. The Association shall obtain and maintain a "master" or "blanket" Multi Peril policy of property insurance on the Project equal to a full replacement value (i.e., 100% of current "replacement cost" exclusive of land, foundation, excavation and other items normally excluded from coverage) of the Project (including all building service equipment and the like and any fixtures or equipment within the Lot which are financed under the mortgage) with an Agreed Amount Endorsement or its equivalent, if available, or an Inflation Guard Endorsement and, if required by FNMA or FHLMC, Demolition and Contingent Liability from Operation of Building Laws Endorsements, an Increased Cost of Construction Endorsement, an Earthquake Damage Endorsement, and other endorsements as necessary. Such insurance shall afford protection against loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage, and such other risks as are customarily covered in similar projects and as are commonly required by private institutional mortgage investors for projects similar in construction, location and use. All policies of property insurance shall provide that, despite any provisions giving the insurance carrier the right to elect to restore damage in lieu of a cash settlement, such option shall not be exercisable without the prior written approval of the Association (or any Insurance Trustee) or when in conflict with the provisions of any insurance Trust Agreement to which the Association may be a party, or any requirement by law. Any blanket policy of property insurance shall contain or have attached a standard mortgagee clause (without contribution) customarily used in the area in which the Project is located which must be endorsed to provide that any proceeds shall be paid to the Indian Hills Owners' Association for the use and benefit of first mortgagees as their interests may appear.



(b) Public Liability Insurance. The Association shall obtain and maintain a comprehensive policy of public liability insurance covering all of the Common Areas and Facilities, if applicable, commercial spaces and public ways (if any) in the Project, with a Severability of Interest Endorsement or equivalent coverage which would preclude the insurer from denying the claim of a Lot owner because of the negligent acts of the Association or another Lot owner, with limits not less than \$1,000,000.00 covering all claims for personal injury and/or property damage arising out of a single occurrence including protection against water damage liability, liability for non owned and hired automobiles, liability for property of others, and such other risks as are customarily covered in similar projects. The scope of coverage also includes all other coverage in the kinds and amounts required by private institutional mortgage investors for projects similar in construction, location and use.

(c) Workmen's Compensation Insurance. The Association shall obtain and maintain workmen's compensation and employers liability insurance (if applicable) and all other similar insurance with respect to employees of the Association in the amounts and in the forms now or hereafter required by law.

(d) Fidelity Insurance or Bond. The Association shall obtain and maintain adequate fidelity coverage to protect against dishonest acts by its officers, members of the Board of Trustees, and employees and all others who are responsible for handling funds of the Association. Such fidelity bonds shall meet the following requirements:

(i) all shall name the Association as an obligee;

(ii) all shall be written in an amount equal to at least 100% of the estimated annual operating expenses and reserves of the Project, (Exceptions to this requirement will be considered on a case by case basis);

(iii) all shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression, or shall contain an appropriate endorsement to the policy to cover any persons who serve without compensation if the policy would not otherwise cover volunteers;

(e) Flood Insurance. If the Project should be declared to be in such a flood area, the Association shall at that time obtain and maintain at all times a blanket policy of flood insurance that meets the then existing FHLMC/FNMA flood insurance requirements for similar Lot projects. Such policy shall contain the standard mortgagee clause customarily used in the area in which the Project is located and provide that any proceeds shall be paid to the Association for the use and benefit of mortgagees as their interest may appear.

(f) Other Insurance. Notwithstanding any other provisions contained herein to the contrary, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for development projects established by the Federal National Mortgage Association and the Government National Mortgage Association, so long as either is a mortgagee or Owner of a Lot within the Project, except to the extent such coverage is not available or has been waived in writing by the Federal National Mortgage Association or the Government National Mortgage Association.

12.2 Insurance Policy Requirements. The Master Multi Peril Property, Public Liability and Flood Insurance policies obtained by the Association pursuant to Section 12.1 shall be subject to the following:

(a) the named insured under any such policies shall be the Association, as a trustee for the Lot Owners, or its authorized representative, including any trustee with which such Association may enter into any Insurance Trust Agreement, or any successor trustee, each of which shall be referred to as the "Insurance Trustee" who shall have exclusive authority to negotiate losses under these policies;

(b) insurance coverage obtained and maintained pursuant to the requirement of Section 12.1 (a) and (b) shall not be brought into contribution with insurance purchase by the Lot or their mortgagees;

(c) coverage must not be prejudiced by (i) an act or neglect of the Lot Owners when such act or neglect is not within the control of the Association or (ii) any failure of the Association to comply with any warranty or condition regarding any portion of the premises over which the Association has no control;

(d) coverage may not be canceled or substantially modified (including cancellation for non payment of premium) without at least thirty (30) days prior to written notice to any and all insured;

(e) all policies must contain a waiver of subrogation by the insurer as to any and all claims against the Association, the Owner of any Lot and/or their respective agents, employees or tenants, and of any defenses based on co insurance or on invalidity arising from the acts of the insured;

(f) each hazard insurance policy shall be written by a hazard insurance carrier which has a financial rating by Best's Insurance Reports of Class A or better;

(g) policies shall be deemed unacceptable where (i) under the terms of the carrier's charter, bylaws or policy, contributions or assessments may be made against a Lot Owner, his first mortgagee or any first mortgagee's designee or such designee's designee; or (ii) by the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's board of directors, policy holders, or members; or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent a Lot Owner, his first mortgagee or any first mortgagee's, designee's or such designee's designee from collecting insurance proceeds; and

(h) all policies of hazard insurance shall contain or have attached the standard mortgagee clause commonly accepted by private institutional mortgage investors in the area in which the Project is located.

12.3 Custody of Insurance Policies. Upon written request and payment of a \$10.00 processing fee, the Board of Trustees shall provide a Lot Owner, his first mortgagee or any first mortgagee's designee or such designee's designee, with a copy of the "master" or "blanket" policy of Multi Peril property insurance, including copies of endorsements to such policy as required by FHLMC or FNMA, and where applicable, a copy of any flood insurance policy, a copy of the comprehensive policy of public liability insurance an appropriate certificate or memorandum of insurance as to each Unit in the Project which is the subject of a mortgage being serviced for FHLMC and FNMA and all other insurance drafts, policies, notices, invoices and other similar documents.

12.4 Additional Coverage. The provisions of this Declaration shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage in addition to any insurance coverage required by this Declaration, in such amounts and in such forms as the Association may deem appropriate from time to time.

12.5 Owner's Own Insurance. Each Owner, at his own expense, shall procure and maintain at all times fire and extended coverage insurance covering personal property of such owner and additional fixtures and improvements added by such owner against loss by fire and other casualties, including without limitation vandalism and malicious mischief. All policies providing such casualty insurance shall provide that they do not diminish the insurance carrier's coverage for liability arising under insurance policies obtained by the Association pursuant to this Article. Notwithstanding the provisions hereof, each Owner may obtain insurance at his own expense providing such other coverage upon his Lot, his personal property, for his personal liability, and covering such other risks as he may deem appropriate; provided that each such policy shall provide that it does not diminish the insurance carrier' coverage for liability arising under insurance policies obtained by the Association pursuant to this Article. If obtainable under industry practice without an unreasonable additional charge for such waiver, all such insurance shall contain a waiver of the insurance company's right of

subrogation against the Association, the Declarant, the Manager, other Owners, and their respective servants, agents and guests.

12.6 Review of Insurance. The Board of Trustees shall review annually the coverage and policy limits of all insurance on the Project and adjust the same at its discretion. Such annual review may include an appraisal of the improvements in the Project by a representative of the insurance carrier or carriers providing the policy or policies on the Project, or by such other qualified appraisers as the Association may select.

12.7 Governmental Requirements. Notwithstanding any other provision herein, the Association shall continuously maintain in effect such casualty, flood and liability and bonds and other insurance meeting the requirements for planned unit developments established by the Federal Home Loan Mortgage Corporation (FHLMC), the Government National mortgage Association (GNMA), the Federal National Mortgage Association (FNMA), Housing and Urban Development (HUD), Federal Housing Administration (FHA), Veterans Administration (VA), State of Utah Finance Agency and conventional lending institutions, so long as there are any mortgages on any of the Properties.

12.8 Hazard Insurance. Each Owner shall be responsible for hazard insurance on the contents of his/her property.

### ARTICLE XIII DAMAGE OR DESTRUCTION

13.1 Association as Attorney in Fact. All of the Owners irrevocably constitute and appoint the Association their true and lawful attorney in fact in their name, place, and stead for the purpose of dealing with the Project upon its damage or destruction as hereinafter provided. Acceptance by any grantee of a deed from the Declarant or from any Owner shall constitute an appointment by said grantee of the Association as his attorney in fact as herein provided. As attorney in fact, the Association shall have full and complete authorization, right and power to make, execute, and deliver any contract, deed, or other instrument with respect to the interest of an Owner which may be necessary or appropriate to exercise the powers herein granted.

13.2 Definition of Repair and Reconstruction. Repair and reconstruction of the improvements as used herein means restoring the Project to substantially the same condition in which it existed prior to the damage or destruction, with each Lot and Dwelling Unit and the Common Areas having substantially the same vertical and horizontal boundaries as before.

13.3 Procedures. In the event any part of the Project is damaged or destroyed, the Association shall proceed as follows:

(a) Notices to First Mortgagees. The Association shall give timely written notice to any Institutional Holder of any first mortgage on a Lot in the event of substantial damage to or destruction of any Lot or any part of the Common Areas.

(b) Estimate of Costs. As soon as practicable after an event causing damage to or destruction of any part of the Project, the Association shall obtain complete and reliable estimate of the costs to repair and reconstruct that part of the Project damaged or destroyed.

(c) Sufficient Insurance. If the proceeds of the insurance maintained by the Association exceed the estimated costs to repair and reconstruct the damaged or destroyed part of the Project, such repair and reconstruction shall be carried out.

(d) Insufficient Insurance. Less than 75% Destruction. If the proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Project, and if less than seventy five percent (75%) of the Project is damaged or destroyed, such repair and reconstruction shall nevertheless be carried out. The Association shall levy a Special Assessment sufficient to provide funds to pay the actual costs of such repair and reconstruction to the extent that such insurance proceeds are insufficient to pay such costs. Such Special Assessment shall be allocated and collected as provided for herein, except that the vote therein specified shall be unnecessary. Further levies may be made in like manner if the amounts collected (together with the proceeds of insurance) are insufficient to pay all actual costs of such repair and reconstruction.

(e) Insufficient Insurance – 75% or More Destruction. If the proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Project, and if seventy five percent (75%) or more of the Project is damaged or destroyed, such damage or destruction shall be repaired and reconstructed as provided herein, if, but only if, within one hundred (100) days following the damage or destruction, the Owners shall elect by a vote of at least seventy five percent (75%) of the Total Votes of the Association to carry out such repair and reconstruction. If, however, the Owners shall not, within one hundred (100) days after such damage or destruction, elect by a vote of at least seventy five percent (75%) of the Total Votes of the Association to carry out such repair and reconstruction, the Association shall record in the office of the County Recorder of Box Elder County, State of Utah, a notice setting forth such facts. Upon the recording of such notice the following shall occur:

(i) The Project shall be deemed to be owned in common by the Owners;

(ii) Any liens affecting any of the Lots shall be deemed to be transferred, in accordance with the existing priorities, to the interest of the respective Owner in the Project; and

(iii) The Project shall be subject to an action for partition at the suit of any Owner, in which event the net proceeds of any sale resulting from such suit for partition, together with the net proceeds of the insurance of the Project, if any, shall be considered as one fund and shall be divided among all Owners.

(f) In no event shall an owner of a Lot or any other party have priority over the Institutional Holder of any first mortgage on such Lot with respect to the distribution to such Lot of any insurance proceeds.

13.4 Repair or Reconstruction. If the damage or destruction is to be repaired and reconstructed as provided above, the Association shall, as soon as practicable after receiving the said estimate of costs, commence and diligently pursue to completion the repair and reconstruction of that part of the Project damaged or destroyed. The Association may take all necessary or appropriate action to effect repair and reconstruction, as attorney in fact for the Owners, and no consent or other action by an Owner shall be necessary in connection therewith, except as otherwise expressly provided herein. The Project shall be restored or repaired to substantially the same condition in which it existed prior to the damage or destruction, with each Lot and the Common Areas having the same vertical and horizontal boundaries as before.

13.5 Disbursement of Funds for Repair and Reconstruction. If repair or reconstruction is to occur, the insurance proceeds held by the Association and any amounts received from assessments shall constitute a fund for the payment of costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for cost of repair and reconstruction shall be made from insurance proceeds, if there is a balance after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to their respective percentages of Ownership of the Common Areas.

13.6 Amendment of Article. This Article XIII shall not be amended unless the Owners of at least two thirds (2/3) of the Lot in the Project consent and agree to such amendment by duly executed and recorded instruments.

ARTICLE XIV  
MORTGAGE PROTECTION

14.1 Matters Requiring Prior Mortgagee Approval. In case of condemnation or substantial loss to the Lots and/or Common Areas of the Project, unless at least eighty percent (80%) of all First Mortgagees (including Institutional Holders) which hold first mortgage liens on Lot in the Project (based upon one vote for each First Mortgage owned) have given their prior written approval, the Association shall not be entitled to:

- (a) Abandon or terminate the Project, except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain;
- (b) Cause any amendment to be made to the Declaration, the Articles, or the Bylaws, which would change the pro rata interest or obligations of any individual Lot for the purpose of:
  - (i) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or
  - (ii) determining the pro rata share of each Lot in the Common Areas; or

14.2 Matters That May Require Prior Mortgagee Approval. Except as otherwise provided herein, in case of condemnation or substantial loss to the Lots and/or Common Areas of the Project, unless at least eighty percent (80%) of the First Mortgagees (based upon one vote for each First Mortgage owned), and all of the Owners of the individual Lots have given their prior written approval, the Association shall not be entitled to:

- (a) Partition or subdivide any Lot;
- (b) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas of the Project; or
- (c) Use hazard insurance proceeds for losses to any Lot property (whether to the Lots, or to the Common Areas) for other than repair, replacement or reconstruction of such Lot property, except as provided by the Lot Act in case of substantial loss to the Lots and/or Common Areas of the Project.

14.3 Prior Liens Relate Only to Individual Lots. All taxes, assessments and charges which may become liens prior to the first mortgage under local law shall relate only to the individual Lots and not to the Project as a whole.

14.4 Subordination of Common Expense Lien. Any lien which the Association may have on any Lot in the Project for the payment of common expense assessments attributable to

such Lot shall be subordinate to the lien of equivalent security interest of any first mortgage on the Lot recorded prior to the date on which any such common expense assessments became due.

14.5 Information Made Available to Mortgagee Upon Request. Any Institutional Holder of a first mortgage on a Lot in the Project shall, upon request, be entitled to: (a) inspect the books and records of the Association during normal business hours; and (b) receive an annual audited financial statement of the Association within 90 days following the end of any fiscal year of the Project; and (c) written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings.

14.6 Priority of Mortgagee in Event of Damage. In the event of substantial damage to or destruction of any Lot or any part of the Common Areas, the Holder of any first mortgage on a Lot shall be entitled to timely written notice of any such damage or destruction and no provision of the Declaration, Articles, or Bylaws or any amendment thereto shall entitle the Owner of a Lot or other party to priority over such holder with respect to the distribution to such Lot of any insurance proceeds.

14.7 Priority of Mortgagee in Event of Condemnation. If any Lot or portion thereof, or the Common Areas or any portion thereof, is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the Holder of any first mortgage on a Lot shall be entitled to timely written notice of any such proceeding or proposed acquisition and no provision of the Declaration, Articles, or Bylaws or any amendment thereto, shall entitle the Owner of a Lot or other party to priority over such holder with respect to the distribution to such Lot of the proceeds of any award or settlement.

14.8 Mortgagee Rights in Event of Foreclosure. Each Holder of a first mortgage lien on a Lot who comes into possession of the Lot by the foreclosure of a mortgagee, or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the Lot free of any claims for unpaid assessments and charges against the Lot which accrue prior to the time such holder comes into possession of the Lot, except for the 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 in the Project, including the mortgaged Lot.

14.9 Notice to First Mortgagees. The Association shall give Institutional Holders of first mortgages who have requested in writing such notice, prompt notice of any default in the Lot mortgagor's obligations under the Lot documents not cured within thirty (30) days of default.

14.10 No Right of First Refusal. No "right of first refusal" shall be included in or added by amendment to the Declaration, Articles or Bylaws which would impair the rights of any holder of a first mortgage on a Lot in the Project to:

- (a) foreclose or take title to a Lot pursuant to the remedies provided in the mortgage,

OR  
Indian Hills  
CC&R's  
04/22/98



(b) accept a deed (or assignment) in lieu of foreclosure in the event of default by a mortgagor, or

(c) interfere with a subsequent sale or lease of a Lot and Dwelling Unit so acquired by the mortgage.

14.11 Identification of Mortgagee. An Owner who mortgages his Lot shall, within ten (10) days after such mortgage has been executed, notify the Board of Trustees of the name and address of his mortgagee for purposes of the mortgagee's receipt of Notices hereunder.

14.12 Amendment. No provision of this Article shall be amended without the prior written consent of at least eighty percent (80%) of all First Mortgagees (including all Institutional Holders which have a first mortgage on any Lot in the Project), based on one vote for each mortgagee.

ARTICLE XV  
GENERAL PROVISIONS

15.1 Enforcement. This Declaration, the Articles of Incorporation and the Bylaws may be enforced by the Association as follows:

(a) Breach of any of the covenants contained in the Declaration or the Bylaws 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 successor in interest of the Association. Any judgment 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 or the Bylaws 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 interest.

(c) The remedies herein provided for breach of the covenants contained in this Declaration or in the Bylaws 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 or in the Bylaws shall not constitute a waiver of the right to enforce the same thereafter.

(e) A breach of the covenants, conditions or restrictions contained in this Declaration or in the Bylaws shall not affect or impair the lien or charge of any bona fide first mortgage or Deed of Trust made in good faith and for value on any residential Lot or the improvements thereon, provided, however, that any subsequent Owner of such property shall be bound by said covenants, whether such Owner, s title was acquired by foreclosure in a Trustee's Sale or otherwise.

15.2 Severability. Invalidation of any one of these covenants or restrictions by judgment or Court order shall in no way affect any other provisions which shall remain in full force and effect.

15.3 Term. The covenants and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and be enforceable by the Association or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, perpetually, unless otherwise provided by an appropriate amendment.

15.4 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 community recreational facilities and the Common Area. 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.

15.5 Amendments. Except as otherwise provided herein and subject to any rights of the VA or the FHA hereunder, this Declaration may be amended only by the affirmative vote or written consent of the Owners holding not less than a majority of the voting power of each class of members; provided, however, that the prior written approval of at least a majority of all first mortgagees must be obtained also, before Article XIV may be amended. Notwithstanding the foregoing, prior to the sale of the first Lot in the Properties, Declarant shall have the right to terminate or modify this Declaration by recordation of a supplement hereto setting forth such termination or modification in accordance with the laws of the State of Utah. For purposes of this Declaration, the sale shall be deemed to be the date upon which a Deed conveying a Lot is recorded in the office of the Box Elder County Recorder. Notwithstanding anything to the contrary contained herein, Declarant reserves the right, by itself, to amend the Subdivision Plat or Plats and the Declaration as amended, from time to

time, to provide to adjust the Lot lines and boundaries and the Common Area lines and boundaries to accommodate the buildings on said Lots as actually constructed.

Provided, further however, this Declaration shall not be amended in such a manner that the rights of any first mortgagee will be adversely affected.

15.6 No Public Right or Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Properties to the public or for any public use. (Except as shown on the recorded Plat).

15.7 Constructive Notice and Acceptance. Every person who owns, occupies or acquires any right, title, estate or interest in or to any Lot or other portion of the Properties does and 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 Properties, or any portion thereof.

15.8 Reservation of Easements. Reciprocal easements are hereby reserved for the benefit of adjoining Lot Owners for the control, maintenance and repair of the utilities of adjoining Lot Owners. Declarant expressly reserves, for the benefit of all of the real property in the Properties and the Owners, reciprocal easements of access, ingress and egress over all Lots and over the Common Area, for the use and enjoyment of the Lots in accordance with this Declaration, including without limitation, for installation and repair of utility services, for drainage over, across and upon adjacent Lots for water resulting from the normal use of adjoining Lots, for maintenance and repair of any dwelling. Such easements may be used by Declarant, its successors, purchasers and all Owners, their guests, tenants and invitee, residing on or temporarily visiting the Properties, for pedestrian walkways, vehicular access and such other purposes reasonably necessary for the use and enjoyment of a Lot and the No Owner of a Lot shall interfere with the established drainage pattern over his/her Lot from adjoining or other Lots, Each Owner of a Lot shall make adequate provisions for drainage in the event he changes the established drainage over his/her Lot. For purposes of this Declaration, "established drainage,, on any Lot is defined as the drainage pattern and facilities in existence at the time that such Lot is conveyed to a purchaser from Declarant. In the event that any dwelling unit encroaches upon the Common Area and facilities as a result of construction, reconstruction, repair, shifting, settlement or movement of any portion of the Properties, a valid easement for encroachment and for the maintenance of the same shall exist so long as the encroachment exists. Declarant and the Lot Owners of each Lot on which there is constructed a dwelling unit along or adjacent to said Lot shall have an easement appurtenant to said Lot over the Lot line to and over the adjacent Lot, for the purposes of accommodating any natural movement or settling of any dwelling unit located on said Lot, any encroachment of any dwelling unit due to minor engineering or construction variances

and any encroachment of eaves, roof overhangs and architectural features as part of the original construction of any dwelling unit located on said Lot. Declarant reserves the right to grant exclusive easements over certain limited portions of the Common Area, if necessary, to certain Lot Owners for yard purposes, as required by the Federal Housing Administration. Declarant further expressly reserves, for the benefit of the Association, its agents and employees, easements of access, ingress and egress over the Lots and Common Area, for the purpose of maintaining, repairing and installing sewer pipelines and laterals in accordance with the provisions of this Declaration and as otherwise provided by law. Each of the Lots and structures thereon shall be and are subject to easements for utilities through, over, under and across said Lots and the., structures thereon, including easements for the installation and maintenance of meters for such utilities.

15.9 Notices. Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered as provided 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.

15.10 No Representation or Warranties. No representations or warranties of any kind, express or implied, have been given or made by Declarant or his/her agents or employees in connection with the Properties or any portion of the Properties, or any improvements thereon, its physical condition, zoning, compliance with applicable laws, fitness for intended use or in connection with subdivision, sale, operation, maintenance, cost or maintenance, taxes or regulations thereof as a planned development, except as specifically and expressly set forth in the Declaration and except as may be filed by Declarant from time to time with the Utah Land Sales Practices Administration or Perry City.

#### ARTICLE VI PARTY WALLS

16.1 Party Wall Declaration. There exists party walls between structures on the Lots. Neither Owner of a party wall may interfere with it to the detriment of the other, or do anything to its structure that will weaken it. The common party walls shall not be removed, remodeled, damaged or changed in any manner whatsoever by either Owner.

16.2 Maintenance of Party Wall. The cost of maintaining each party wall shall be born equally by the owners on either side of said wall.

16.3 Damage to Party Wall. In the event of damage or destruction of said wall from any cause, other than the negligence of either party thereto, the owners shall at joint expense, repair or rebuild said wall, and each party, his or her successors or assigns, shall have the right to the full use of said wall if so repaired or rebuilt. If either party's negligence shall cause damage to or destruction of said wall, said negligent party shall bear the entire cost of repair or reconstruction. If either party shall neglect or refuse to pay his or her share, or all of such costs in case of negligence, the other party may have such wall repaired or restored and shall be entitled to have a lien on the premises of the party so failing to pay, for the amount of such defaulting party's share of the repair or replacement costs.

16.4 Drilling Through Party Wall. Either party shall have the right to break through the party walls for the purpose of repairing or restoring sewage, water, and utilities, subject to the obligation to restore said wall to its previous structural condition, at his or her own expense, including the payment to the adjoining owner of any damages negligently caused thereby.

16.5 Easement. Neither party shall alter or change said party walls in any manner, interior decoration excepted, and said party walls shall always remain in the same location as when erected, and each party to said, common or division wall shall have a perpetual easement in that part of the premises of the other on which said party wall is located, for party wall purposes.

Absent negligent action of either party damages to or destruction of the party walls shall be repaired or replaced at the common, equal expense of each Owner.

Declarant has executed this Declaration on the day and year first above written.

DECLARANT:  
INDIAN HILLS, L.C.

By Joe Colosimo  
Its MANAGER

STATE OF UTAH )  
  : ss.  
County of Salt Lake )

On this 24<sup>th</sup> day of April, 1998, personally appeared before me Joe Colosimo whose identity is personally known to me, or proved to me on the basis of satisfactory evidence, and who by me duly sworn, did say that he is the Manager of INDIAN HILLS and that said CC

& R's were signed by him in behalf of said limited liability company by authority of its Operating Agreement and said Joe Colosimo acknowledged to me that said limited liability company executed the same.

Residing in Ogden, UT

*Nichole C. Skinner*  
NOTARY PUBLIC  
Commission expires 3-25-02

