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The Aerie at Eaglewood PUD
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Declaration of Covenants, Conditions and Restrictions

of

The Aerie at Eaglewood.

a Planned Unit Development

made by

Eaglewood Development, L.L.C.

November 4, 1998

Aerie PUD CCR's

-i-

(11/04/98)

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF THE AERIE AT EAGLEWOOD, A PLANNED UNIT DEVELOPMENT**

This DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is made and entered into as of this 5th day of November, 1998, by EAGLEWOOD DEVELOPMENT, L.L.C., a Utah limited liability company ("Eaglewood"). This Declaration establishes a planned unit development to be known as "The Aerie at Eaglewood, a Planned Unit Development, in contemplation of the following facts and circumstances:

A. The Aerie at Eaglewood, established by and subject to this Declaration, is situated in and upon the following described real property (the "Property") situated in North Salt Lake City, Davis County, State of Utah, and more particularly described as follows:

Beginning at a point on the Boundary of the North Salt Lake City Golf Course Property which point is N89°18'00"E 277.35 ft. along the Quarter Section Line from the West Quarter Corner of Section 7, T. 1N., R. 1E., S.L.B.&M. and running thence along said boundary of the Golf Course in the following three courses: N8°00'00"E 203.21 ft., North 300.00 ft., S41°54'20"E 696.79 ft.; thence along the Northwest boundary of Eagle Ridge Boulevard (a 72.00 ft. wide road) in the following two courses: S38°15'00"W 146.44 ft., Southwesterly 428.55 ft. along the arc of a 964.00 ft. radius curve to the right through a central angle of 25°28'17" (Chord Bears S50°59'09"W 425.04 ft.); thence along said boundary of the Golf Course in the following two courses to the point of beginning: N26°16'43"W 226.75 ft., N8°00'00"E 198.54 ft. Containing approximately 5.6035 acres

B. Eaglewood is currently the owner in fee simple of the Property described in Recital A.

C. Eaglewood has undertaken to subdivide and develop the Property as a planned unit development to be used for residential purposes, subject to the covenants, conditions, restrictions, reservations, assessments, charges, and liens as stated herein.

Now therefore, the Declarant does hereby make and consent to the Declaration as follows:

**ARTICLE I
Definitions**

Certain capitalized terms used in this Declaration shall have the meanings set forth in this Article I.

- 1.1 Architectural Control Committee shall have the meaning given to such term in Article VI.
- 1.2 Articles shall mean the Articles of Incorporation of the Association, as the same may be amended from time to time.
- 1.3 Assessments shall mean collectively Regular Assessments, Special Assessments or any other levy made by the Association pursuant to this Declaration, or, if the context requires, any or all of these, as applicable.
- 1.4 Association shall mean the Aerie Owners Association, a Utah non-profit corporation.
- 1.5 Association Expenses shall mean all Common Expenses and all Landscape Expenses.
- 1.6 Association Fund shall mean the primary operating fund of the Association and repository of all Assessments and any other funds owned by the Association.
- 1.7 Board of Trustees or Board shall mean the governing board of the Association, appointed or elected in accordance with this Declaration and the Articles and Bylaws.
- 1.8 Bylaws shall mean the Bylaws of the Association adopted by the Association.
- 1.9 Common Areas shall mean all physical portions of the Project, including all land and improvements thereon or therein, except all Lots, including specifically, but without limitation, all portions of the Map which are identified on the Map as "Common Area" and all areas shown to be roads or streets. Common Areas may be subject to Easements as provided herein.

1.10 Common Expenses shall mean all costs and expenses which may be incurred by the Association in the management, control, maintenance and operation of all areas of the Project for which the Association shall have responsibility in accordance with the provisions of this Declaration, including Common Areas and Common Improvements, but specifically excluding, however, any and all Landscape Expenses. The term Association Expenses shall be liberally construed to include all expenses of the Association, except Landscape Expenses and shall include utility charges billed to Common Areas; expenses of management; governmental taxes and special assessments; real property taxes charged or levied against all Common Areas and/or Common Improvements; premiums for all insurance that the Association is required or permitted to obtain and maintain hereunder; repairs and maintenance of the Common Areas and Common Improvements; installation and maintenance of a Project security system; expenses for maintenance of the Roads including snow removal; wages for Association employees including a Manager, if any; legal and accounting fees; any deficit remaining from a previous accounting period; creation of a reasonable contingency reserve or surplus and/or sinking fund; and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners or by reason of this Declaration.

1.11 Common Facilities shall mean all pavilions, gazebos, picnic facilities, playground and recreational equipment and other structures and/or equipment constructed, installed and maintained upon the Common Areas and intended for the use and enjoyment of all Owners in accordance with rules and regulations adopted by the Association. The Association shall be the owner of all Common Facilities. The foregoing notwithstanding, nothing herein shall be construed to require either the Declarant or the Association to install any pavilions, gazebos, picnic facilities, playground and recreational equipment in or upon the Common Areas.

1.12 Common Improvements shall mean all structures, walkways, sidewalks, driveways, walkways, fences, decorative planters, landscaping, light posts or lighting systems, sprinkler and irrigation systems, electrical power distribution systems and equipment, erosion control devices, ponds, water systems, sewer systems, drainage systems and all other similar or dissimilar improvements which have been or will be constructed or installed for the use and enjoyment of all Owners notwithstanding that such improvements may be on, across, or under any individual Lot. The term Common Improvements shall include Common Facilities. The Association shall be the owner of all Common Improvements.

1.13 Current Owner shall mean that entity which owns and/or operates the Golf Course. As of the date of the recordation of this Declaration the owner of the Golf Course is the City of North Salt Lake.

1.14 Declarant shall mean Eaglewood Development, L.L.C., a Utah limited liability company.

1.15 Declaration shall mean this Declaration of Covenants, Conditions, and Restrictions of The Aerie at Eaglewood, a planned unit development, all exhibits attached hereto and incorporated by reference, and all amendments hereto or to any such exhibit.

1.16 Golf Course shall mean the eighteen hole golf course facility (including the driving range) and the related improvements, adjacent to the Property.

1.17 Landscape Completion Date shall mean the first date upon which each and every Lot shall be a Landscaped Lot.

1.18 Landscape Expenses shall mean such costs and expenses incurred by the Association to design, maintain, care for, repair, replace, construct or reconstruct, clean, or perform any other obligation, duty, responsibility, right, power, or privilege which the Association may have toward all Limited Common Areas and Limited Common Area Improvements, including Landscape Improvements.

1.19 Landscape Improvements shall mean all grass; all flower or gardening beds; all grass, flowers, trees, shrubs, bushes, hedges and the like; all sprinkler and irrigation systems; decorative planters; lights, light fixtures, light poles and lighting systems; all electrical systems related to sprinkler and irrigation systems and lighting systems; all drainage systems whether for the specific benefit of any individual Lot or otherwise; and all other landscaping and other improvements and other similar or dissimilar related improvements which have been or will be constructed or installed upon or under the Limited Common Areas with respect to care and maintenance of the Limited Common Areas. No part of any Unit, any Patio Area or any Patio Area Improvement shall be part of the Landscape Improvements.

1.20 Landscape Plan shall have the meaning given to it in Article VIII.

1.21 **Landscape Lot** shall mean a Lot upon which all Landscape Improvements required pursuant to the Landscape Plan have been planned, installed and/or constructed as applicable.

1.22 **Limited Common Areas** shall mean all land within a Lot except (i) such portions of the land upon which any part of the Unit shall be located, and (ii) such portions of the land which shall be designated as a Patio Area; provided, however, that there shall be no Limited Common Area on any Lot on which a Unit has not been constructed.

1.23 **Lot** shall mean a separately manifested and individually described plot of land as shown on the Map, and, where the context shall so require, shall include the Unit constructed upon such land.

1.24 **Manager** shall mean the person, firm, or company, if any, designated from time to time by the Association to manage, in whole or in part, the affairs of the Association and the Project.

1.25 **Map** shall collectively mean the final recorded plat pertaining to Project recorded in the official records of the office of the County Recorder of Davis County, State of Utah (i) for The Aerie at Eaglewood, a Planned Unit Development, on November 5, 1998 as Entry No. 1455775 in Book 2388 at Page 311 (the "Map").

1.26 **Member** shall mean the same as Owner herein.

1.27 **Membership** shall mean the status of having or owning all of the rights, powers, and privileges of a Member.

1.28 **Mortgage** shall mean any mortgage, deed of trust, or other security instrument by which a Lot or any interest therein is encumbered.

1.29 **Mortgagee** shall mean (i) any person named as the mortgagee or beneficiary under any Mortgage by which the interest of any Owner is encumbered or (ii) any successor to the interest of such person under such Mortgage.

1.30 **Mortgagor** shall mean any Owner whose Lot or interest therein is encumbered by a Mortgage.

1.31 **Owner** shall mean any entity or individual, including Declarant, owning in fee simple any Lot as such ownership is shown upon the records of the County Recorder of Davis County, State of Utah. Owner shall not refer to (i) any Mortgagee (unless such Mortgagee has acquired title for other than security purposes), (ii) any person who uses or occupies a Unit but owns less than fee simple title to the Lot upon which such Unit is located during such use or occupancy, unless otherwise provided in this Declaration, or (iii) any person or entity which shall be purchasing a Lot under contract until such contract is fully performed and legal title to the Lot is conveyed of record.

1.32 **Patio Area** shall have the meaning given to it in Section 3.5.

1.33 **Percentage Interest** shall mean the proportion of the Project, expressed as a percentage, of the square feet contained in the designated Lot as compared to the total square feet contained in all Lots in the Project. The Percentage Interest shall be determined for each Lot by dividing the total square feet of such Lot, as shown on the Map, by the total square feet of all Lots in the Project. The Percentage Interest for each Lot is set forth in the attached Exhibit "A" which shall be applicable to each respective Lot. The Percentage Interest shall be determined for each Lot by dividing the number one (1) by the total number of Lots in the Project, which total is thirteen (13) Lots. Therefore, the Percentage Interest for each Lot is 7.69231%. The Percentage Interest shall not change unless and until the total number of Lots within the Project changes.

1.34 **Project** shall mean the Property together with improvements thereon, including without limitation Common Areas, Common Improvements, Landscape Improvements, Lots, and Units.

1.35 **Property** shall mean the real property described in Recital A.

1.36 **Regular Assessment** shall mean each Owner's share of the total annual Association Expenses.

1.37 **Regulations** shall mean such rules, ordinances, and regulations as the Association may make pursuant to this Declaration and the Articles and Bylaws, governing the use of the Lots, the Common Areas, the Project and all parts thereof, as such may from time to time be modified, amended and construed by the Association.

1.38 **Roads** shall mean those areas designated on the Map as roads or streets within the Project, regardless of the names or designations given.

1.39 **Special Assessments** shall have the meaning given to it in Article IX.

1.40 **Total Votes** shall mean the total number of votes appertaining to all Lots in the Project which total is thirteen (13) votes.

1.41 **Unit** shall mean the single family dwelling located on a Lot, including (i) all driveways, drive approaches and other similar areas, if any, (ii) all balconies, breezeways, decks and porches not located within a Patio Area and (iii) all entry and other side-walks located upon the Lot upon which the Unit has been constructed.

1.42 **Unit Exterior** shall mean any physical characteristic, structure, fixture, improvement, part or aspect of a Unit situated or located on the exterior of such Unit or which can be seen under normal conditions, in day or night, from the boundaries of the Lot on which such Unit is located and which is part of the Unit or attached thereto, including without limitation the roof and any chimney, vents, pipes; exterior walls; doors (including garage doors); the interior of any garage which is consistently left open for any more than a temporary and brief period as determined by the Association; screens; windows; items placed in windows or transparent doors or other otherwise interior conditions which can be seen from outside the Unit; curtains or draperies; blinds; shutters; signs; satellite dishes; balconies, breezeways, decks and porches which are not located within a Patio Area; all driveways, drive approaches and other similar areas, if any; all entry and other side-walks; or items similar to any of these.

1.43 **Unit Interior** shall mean any physical characteristics, structure, improvement, part, or aspect of a Unit which is not considered to be part of the Unit Exterior.

1.44 **Vehicle** shall include without limitation any motor vehicle, car, auto, truck, pickup, van, recreational vehicle, boat, trailer, motorcycle, all terrain vehicle, tractor or the like.

ARTICLE II Declaration

Declarant hereby declares that all of the Property shall be held, sold, conveyed, and occupied subject to the terms, conditions, covenants, restrictions, uses, limitations, obligations, and provisions of this Declaration, each and all of which are declared and agreed to be for the benefit of the Property and the development of the Property as a planned unit development. Each and all of the provisions of this Declaration shall be deemed to run with the land and shall bind and be a burden and a benefit to (i) the Declarant, including its successors and assigns, (ii) any person or entity acquiring any Lot or any Owner, and the heirs, personal representatives, successors, and assigns of any such person, entity or Owner, and (iii) the Association.

ARTICLE III Property Rights

3.1 **Title to and Use and Occupancy of Lots.** Each Lot (i) shall be owned in fee simple by an Owner, (ii) shall be subject to this Declaration and any other encumbrances, easements restrictions to which the Lot may be subject; and (iii) may be held or owned by any person or entity, or in any combination thereof, in any manner which title to any other real property may be owned in the State of Utah, including without limitation, joint tenancy or tenancy in common. Subject to and as a result of the limitations contained in this Declaration and the Articles, Bylaws and Regulations, each Owner shall have (i) the exclusive right to use and enjoy said Owner's Unit, (ii) the non-exclusive right to use and enjoy the Common Areas, (iii) the exclusive right to use and enjoy any Limited Common Areas located within the boundaries of the Owner's Lot, subject to the provisions of this Declaration giving to the Association the exclusive right to landscape and maintain such Limited Common Areas, and (iv) membership in the Association, and all other rights and limitations appertaining to Lots and given to Owners as set forth in this Declaration.

3.2 **Legal Description of Lots.** Every agreement or contract for the sale, conveyance or transfer of a Lot and every other instrument affecting title to a Lot may describe a Lot by identifying the number of the Lot as shown on the Map. Unless expressly stated otherwise in the description, such description shall be construed to describe the Lot and the Unit, together with such Lot's appurtenant interest in the Association and the easements for the use of Common Areas and to incorporate all of the rights incident to ownership of a Lot as set forth in this Declaration and all limitations on such ownership.

3.3 **Unit Interior.** Each Owner shall have the exclusive right, at the sole cost and expense of such Owner, to paint, repair, tile, paper, carpet, remodel, rebuild or otherwise decorate or redecorate the Unit Interior. Each Owner shall have a duty to keep the Unit Interior and the Patio Area located upon said Owner's Lot, in a clean and sanitary condition and in good repair.

3.4 **Unit Exterior.** Subject to the provisions of Article VI, each Owner shall have the exclusive right, at the sole cost and expense of such Owner, to construct or reconstruct, build, improve, paint, repair, remodel, rebuild, or otherwise decorate or redecorate the Unit Exterior, provided that all such activities shall be conducted in strict compliance with the procedures outlined in this Declaration. Each Owner shall have a duty to keep the Unit Exterior in a clean and sanitary condition and in good repair. In the event that any such Unit Exterior shall develop an unsanitary or unsafe condition or fall into a state of disrepair, and in the event that the Owner of such Unit shall fail to correct such condition within fifteen (15) days after written notice thereof from the Association, the Association shall have the right, without liability to the Owner for trespass or otherwise, to enter upon the Lot on which the Unit is located and correct, eliminate, or remove said unsanitary or unsafe condition or state of disrepair, with such action being taken at the sole cost and expense of the Owner, which cost and expense shall be payable within thirty (30) days of the date of written notice thereof. Until repayment, such costs and expenses shall be both a lien against said Owner's Lot and the personal liability of the Owner as provided in this Declaration. The Association shall have the right to establish and enforce such lien and to collect such amounts in the manner provided for the collection of Assessments in this Declaration. In no event shall the Association have any duty or obligation, express or implied, to correct or eliminate any such condition or state of disrepair and the Association shall not be responsible to any party for any injury or damage to any person or property caused by the condition of any Lot or Unit.

3.5 **Patio Area.** Each Owner of a Lot may elect at any time to designate a portion of such Lot as "Patio Area", provided that the Patio Area shall be: (i) within such Owner's Lot in an area which would otherwise be Limited Common Area, (ii) directly behind the Unit built on the Lot so as to not be within view of the Road upon which the Unit is constructed (as determined by the address of such Unit), (iii) be contiguous to the rear exterior wall of the Unit, (iv) no larger in area than 300 square feet, and (v) within the area designated on the Map as "Private Ownership" for such Lot.

3.5.1 **Procedure.** Designation of a Patio Area shall be made in writing to the Board. Upon receipt the Board, shall within thirty (30) days after receipt of such request for approval, either: (a) approve the proposed Patio Area; or (b) notify the party making such request of any objections thereto (such objections to be specifically stated). Failure on the part of the Board to give any written notice of approval or disapproval within the time period provided for above shall constitute approval thereof by the Board. No changes or deviations in or from an approved request shall be made without the prior written approval of the Board. Each request for approval shall contain a specific description of the area proposed to be designated Patio Area. An Owner may abandon a Patio Area and permit such area to again become Limited Common Area by written notification to the Board. Such abandonment shall become effective upon (i) receipt of such notice of abandonment by the Board, (ii) removal of any and all improvements existing in the Patio Area, and (iii) completion of installation of Landscape Improvements in the abandoned Patio Area. The Owner shall be responsible, at the cost and expense of the Owner, to cause the improvements located upon an abandoned Patio Area to be removed and to have Landscape Improvements installed in accordance with the Landscape Plan within sixty (60) days after the date the request for abandonment is received by the Board.

3.5.2 **Improvements to Patio Area.** Any improvements to be constructed upon a Patio Area shall be approved prior to the start of construction in accordance with the provisions of this Declaration concerning architectural approval set forth in Article VI. Upon such approval, an Owner may construct, reconstruct, build, improve, erect and maintain with the Patio Area of the Owner's Lot, a patio or deck and may landscape, decorate, maintain the Owner's Patio Area and such other improvements as may have been approved. The construction, renovation, maintenance and removal of any and all improvements to a Patio Area shall be made at the sole cost and expense of the Owner of the applicable Lot.

3.5.3 **Maintenance.** Each Owner shall have a duty to keep the Patio Area in a clean and sanitary condition and in good repair. In the event that any such Patio Area or any improvements located thereon shall develop an unsanitary or unsafe condition or fall into a state of disrepair, and in the event that the Owner of such Unit shall fail to correct such condition within fifteen (15) days after written notice thereof from the Association, the Association shall have the right to cause such condition to be corrected in the manner provided for correction of such a condition relating to a Unit Exterior as provided in Section 3.4.

3.6 **Title to Common Areas.** Fee simple title to the Common Areas and Common Improvements, shall be held in the name of the Association. Such title shall be conveyed by Declarant prior to or concurrently with the conveyance of the first Lot. Such title shall be subject to this Declaration and easements, covenants, servitudes and rights-of-way of records and the easements granted in this Declaration.

3.7 Combination of Lots. With the prior written consent of the Association, two or more contiguous Lots having the same Owner may be utilized by such Owner as if one Lot. Except for such combination, the ownership and use of the combined Lots shall be consistent with the provisions of this Declaration, the Regulations and any conditions to such combined use imposed by the Association. When any two such Lots are combined, the Limited Common Area in either Lot which is contiguous with the common boundary between such Lots and is designated on the Map as a "5' Wide Sideyard", but not including any part of such Limited Common Area which shall be located within either the "20' Wide Frontyard Setback" or the "10' Wide Rearyard," may be utilized for the construction of a Unit and/or designated as a Patio Area and such portions thereof as so used shall thereafter be deemed to be designated for Private Ownership.

3.8 No Subdivision or Timesharing. No Owner shall cause a Lot to be divided or occupied in any manner which would provide that the exclusive use, occupancy or possession of the Lot circulates among more than one (1) Owner or occupant or in any other manner which would violate the applicable ordinances of the applicable government authority. Any arrangement, however denominated, which would provide for timesharing or any other method for the rotation or circulation of the right to occupy a Unit shall be strictly prohibited.

3.9 Intangibility. Title to no part of a Lot, including any Unit thereon or any part thereof, may be separated from any other part thereof, and each Lot with its appurtenant rights and easements shall always be conveyed, devised, encumbered and otherwise affected only as a complete Lot. Every lease, devise, encumbrance, conveyance or other disposition of a Lot, or any part thereof, shall be construed to be a lease, devise, encumbrance, conveyance or other disposition, as applicable, of the entire Lot, together with all appurtenant rights, burdens and limitations created by law or by this Declaration, including without limitation appurtenant membership in the Association and easements established by this Declaration. None of the interests in a Lot may be separated in any manner which would attempt to separate the benefits and burdens associated therewith.

3.10 Separate Mortgages by Owners. Each Owner shall have the right to separately encumber by Mortgage its Lot. Any Mortgage or other encumbrance of any Lot shall be subject and subordinate to all the provisions of this Declaration and, in the event of any foreclosure of any such Mortgage or any other event by which title to the Lot becomes vested in the Mortgagee, the provisions of this Declaration shall be binding upon any Owner whose title is derived through foreclosure by private power of sale, judicial foreclosure or otherwise.

3.11 Separate Taxation. All taxes relating to or assessed or charged against a Lot or any improvements located thereon shall be paid by the respective Owners of such Lot. Taxes relating to or assessed or charged against all Common Areas, Common Facilities and Common Improvements shall be paid by the Association and shall be part of the Common Expenses.

ARTICLE IV Easements

Each easement described in this Article is appurtenant to and passes with title to every Lot. Each and every conveyance of a Lot, whether by Declarant or any successor in interest of Declarant or any subsequent Owner, shall be construed to include such grants and reservations of easements as are provided for in this Declaration, even though no specific reference to such easements appears in any such conveyance.

4.1 Encroachments. If any part of the Common Improvements encroach or shall hereafter encroach upon any Lot, an easement for such encroachment and for the maintenance of the same shall and does exist. Such encroachments shall not be considered encumbrances on the Lots. Encroachments referred to herein shall include without limitation encroachments caused by error in the original construction of Common Improvements, by error in the Map, by settling, rising, or shifting of the earth or by changes in position caused by repair or reconstruction of any Common Improvement, or any part thereof, in accordance with the provisions of this Declaration.

4.2 Common Area Easement. Every Owner shall have a non-exclusive right and easement of use and enjoyment in and to and ingress to and egress from the Common Areas, subject to the following limitations:

- (a) The right of the Association to adopt Regulations regulating the use and enjoyment of the Common Areas.
- (b) The right of the Association to limit the number of persons using any Common Areas.

(c) The right of the Association to suspend an Owner's right to use of the Common Areas for any period during which any assessment or portion thereof against such Owner's Lot remains unpaid; and for a period of not to exceed thirty (30) days for each infraction or violation of the Regulations or this Declaration;

(d) The right of the Association to grant easements for public utilities or other public purposes consistent with the intended use of the Common Areas;

(e) The right of the Association to take such steps as are reasonably necessary or desirable to protect the Common Areas against foreclosure; and

(f) The terms and conditions of this Declaration.

4.3 Limited Common Area Easement. The Association shall have the exclusive right and easement, without interference from any Owner, to design, plan, grade, landscape, decorate, maintain, care for and/or repair, all Limited Common Areas and Landscape Improvements located thereon (the "Limited Common Area Easement"). Pursuant to this Limited Common Area Easement, the Association, its managers, employees, agents and representatives shall have an easement over, under, across and upon all Limited Common Areas from time to time at such reasonable hours as may be necessary for the exercise of any of the Association's rights with respect to Limited Common Areas, whether listed above, or elsewhere, or for making emergency repairs or taking other emergency actions at any time therein necessary to prevent damage to any Limited Common Areas. Such entry shall be made with as little inconvenience to the Owner as practicable and any damage to a Unit caused thereby shall be repaired by the Association with funds from the Association Fund.

4.4 Golf Course Easement and Assumption of Risk.

4.4.1 Stray Ball Easement. Each Owner hereby expressly assumes the risk relating to the proximity of an Owner's Lot to the Golf Course and each Owner agrees that it shall take its Lot subject to the following stray ball license and/or easement:

(a) **Prior to Construction of a Unit.** Until such time as a Unit is constructed upon a Lot, the Course Owner shall have a license to permit and authorize its employees, agents, and representatives and all players, caddies and other users of the Golf Course to enter upon a Lot to recover a ball or play a ball, subject to the official rules of the Golf Course, without such entering and playing being deemed to be a trespass thereon.

(b) **After Construction of a Unit.** After a Unit has been constructed upon a Lot, the Owner of such Lot acknowledges and agrees that, due to the proximity of the Lot to the Golf Course, stray golf balls might enter upon the Lot and some of the players, caddies or other users of the Golf Course might enter upon said Lot to retrieve said stray golf balls. In the event that a golf ball enters upon said Lot or any player enters upon such Lot to retrieve or play a stray golf ball or for any other reason, the Owner of such Lot agrees that neither Declarant nor the Course Owner shall be responsible or liable for (i) any damages caused by a stray ball, players, caddie or any other user of the Golf Course, or (ii) any claim of trespass that the Owner of such Lot may assert or be entitled to assert resulting therefrom. Nothing set forth herein shall be construed to limit an Owner's right to recover from an individual user of the Golf Course (but not from Declarant or the Course Owner) any and all damages to persons or property which may be directly caused by the willful conduct of such user.

4.4.2 Assumption of Risk by Owner and Indemnification. Each Owner hereby expressly assumes the risk relating to the proximity of its Lot to the Golf Course and each Owner agrees that neither Declarant, the Course Owner, nor the successors or assigns of either, nor any entity responsible for the design, construction, ownership, management or operation of the Golf Course shall be liable to Owner, its guests, tenants, licensees or invitees or any other person claiming any loss or damage, including, without limitation, indirect, special or consequential loss or damage arising from personal injury, destruction of property, loss of view, noise pollution or other visual or audible offenses, or trespass or any other alleged wrong or enticement to remedy based upon, due to, arising from or otherwise related to the proximity of the Lot to the Golf Course, including, without limitation, any claim arising in whole or in part from the alleged negligence of any person or entity responsible for the design, construction, ownership, management or operation of the Golf Course. Each Owner hereby agrees to indemnify and hold harmless Declarant and any entity responsible for the design, construction, ownership, management or operation of the Golf Course, including the Course Owner, against any and all claims by such Owner or Owner's guests, tenants, licensees and invitees. Nothing set forth herein shall be construed to limit an Owner's right to recover from an individual user of the Golf Course (but not from Declarant or the Course Owner) any and all damages to persons or property which may be directly caused by the willful conduct of such user.

4.4.3 Restricted Access to Golf Course. Notwithstanding the proximity of the Project to the Golf Course, each Owner acknowledges that ownership of any Lot does not convey to said Owner or create in favor of said Owner any interest in or right to the use of or the right to unrestricted access to or view of the Golf Course. Use of the Golf Course shall be strictly limited and controlled by the Course Owner, in its sole and absolute discretion, including the construction of fences or other barriers to prevent direct access to the Golf Course from any Lot or the Project.

4.5 Road Utility Easement. There is hereby granted to utilities serving the Project and the Units, a blanket easement upon, across, over and under all of the Roads for the construction, operation and maintenance of conduits, cables, pipes, mains, ducts, wires and other necessary equipment on or under the Roads (provided that all such services shall be placed underground) reasonably necessary for delivery of utility services to the Project and the Units, including without limitation, water, sewer, storm drainage, telephone, natural gas, electricity, cable television and other electronic transmissions. Any user of this easement shall be responsible to repair or restore any portion of the Project, including Common Improvements, which shall be disturbed or damaged in the exercise of the right herein granted. Any user of the easement granted herein shall fully compensate any of the Owners, the Association or Declarant for any damage (including without limitation damage or injury to person or property), claims, demands, costs (including attorneys' fees), judgments or any other event, arising from the presence or activities of such utility, its agents, employees, invitees, licensees, and members, in or on the Project or in any way connected or related to the activities or presence of such utility within or on the Project. Also in connection with this easement, each user of the easement agrees and covenants to defend, indemnify and hold harmless the Declarant, the Association and the Owners from and/or against any and all liability, loss or damage, including without limitation damage or injury to person or property, as a result of claims, demands, costs (including attorneys' fees), judgments or any other event, arising from the presence or activities of any user, its agents, employees, invitees and licensees.

4.6 Storm Drainage Easement. There is hereby created a blanket easement upon, across, over and under all of the Lots for construction and maintenance of storm drain systems and erosion control devices. By virtue of this easement, it shall be expressly permissible for the Association to lay, construct, install, operate and maintain conduits, pipes, mains, ducts, catch basins and other necessary facilities on the Project, provided that all such facilities shall, to the extent possible, be placed underground in the Common Area and Limited Common Area. The storm drainage system shall be maintained under the direction of the Association.

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

ARTICLE V Restrictions

5.1 General Use Restrictions. Only a Unit comprising a single family residence, and no other structure may be built on a Lot. Only one Unit may be built on each Lot, subject to the provisions governing combination of Lots. Each Unit shall be used for residential purposes and for no other purpose. All Units erected on Lots shall be of new construction and no buildings or structures shall be moved from other locations to any Lot. No fences shall be built between Lots, between Lots and Common Areas, or on Lot boundary lines. An Owner may, subject to the approval first had from the Board, erect a fence around the Patio Area upon its Lot. Notwithstanding any provisions to the contrary in this section, any Owner may rent or lease its Lot in accordance with the provisions of this Declaration.

5.2 Waiver of Right to Landscaping. Each Owner does expressly waive any right to design, install and maintain grass, flowers, trees and other landscaping traditionally associated with the ownership and occupancy of a residential subdivision lot. By acceptance of a deed to a Lot, each Owner does acknowledge that the Project has been designed to provide for the uniform design and maintenance of all landscaping throughout the Project and the exclusive right to conduct any and all activities traditionally associated with the landscaping of residential subdivision lots has been granted and reserved unto the Association in accordance with the terms and conditions of this Declaration.

5.3 Quiet Enjoyment. No noxious or offensive activity shall be carried on in or upon any part of the Project, nor shall anything be done or placed in or upon any part of the Project which is or may become a nuisance or which may cause unreasonable disturbance or annoyance to Owners generally. No damage to or waste of the Common Areas or any part thereof shall be committed by any Owner or guest of any Owner and each Owner shall indemnify and hold harmless the Association and all other Owners from and against any and all losses resulting from such damage or waste caused by such Owner or the guest, tenants, licensees or invitees of such Owner.

5.4 Construction and Alteration: Architectural Approval. No construction of any Unit, building, improvement, structure, fence, wall, or addition, extension, or modification upon or to any Unit Exterior, or expansion of any of the foregoing shall be commenced, erected or maintained, nor shall any addition, change, modification, alteration, or improvement to any Unit Exterior be made until after plans and specifications showing the nature, kind, shape, height, materials, colors and location of the same shall have been submitted to and approved by the Architectural Control Committee.

5.5 Business and Sales. No commercial activities of any kind shall be conducted in any Unit or on any portion of the Project, unless such activities shall be permitted by applicable city ordinances and the person desiring to conduct such activity shall have fully complied with the requirements for the conduct of such activity, including obtaining the necessary license and/or permit. Notwithstanding the provisions of any applicable city ordinance which may permit same, no sign or other advertising or directional device of any nature related to any commercial activity which shall be permitted to be conducted within the Project in accordance with the provisions of this section shall be permitted. However, this restriction shall not apply to the commercial activities, signs and billboards, if any, of the Declarant or its agents during the construction and sales period or by the Association in furtherance of its powers and purposes as set forth hereinafter and in its Articles, Bylaws, and the Regulations, as the same may be amended from time to time.

5.6 Signs. An Owner shall be permitted to place one "For Rent" or "For Sale" sign of not more than four (4) square feet in total surface area (a "Rent or Sale Sign"), which Rent or Sale Sign may be placed in the front yard of each Lot by the Owner of such Lot. Except for such Rent or Sale Sign, no signs, flags, or advertising devices of any nature, including without limitation commercial, political, informational or directional signs or devices, advertising signs, billboards, objects of unsightly appearance, or nuisance shall be erected, placed, or permitted to remain on any Lot or any portion of the Project (except as may be necessary to temporarily caution or warn of danger). Any such item which remains so placed as to be in violation of any of the foregoing for over 72 hours, consecutively or cumulatively, shall be subject to removal by the Association, at the expense of the Owner. Notwithstanding any other provision hereof, the Declarant shall have the right to install advertising and directional signs in the Project during the construction and sales period. Notwithstanding the provisions of this section, the Association may place such street signs and other signs identifying the Project or aspects thereof on the Common Areas as it deems reasonable.

5.7 Leasing. Any lease or sublease of a Lot shall be in writing. No lease shall be used to contravene the provisions of Section 3.8. All tenants and subtenants of any Lot shall abide by and be subject to any and all of the provisions, covenants, restrictions, prohibitions and terms of this Declaration, the Articles, Bylaws and Regulations, including provisions relating to assessments and collections thereof, and any liens therefore, as if Owners hereunder and each lease or sublease of any Lot shall so provide. Each lease or sublease of any Lot shall provide that any failure to abide by the provisions, covenants, restrictions, prohibitions and terms of this Declaration, the Articles, Bylaws and Regulations, including provisions relating to assessments and collections thereof, and any liens therefore, shall be a breach and event of default under such lease or sublease. If an Owner or lessor of an Owner shall lease any Lot, the Owner or lessor of an Owner shall promptly notify the Association, in writing, of (i) the fact of the lease, (ii) the name of the tenant under such lease, (iii) the address of the Owner during the term of the lease, and (iv) the terms and conditions of such lease. As used in this section, the term "lease" shall include a lease, rental arrangement, license or any other arrangement for exclusive or partially exclusive use of a Lot by a person other than an Owner for a period of time longer than a few days. Any lease made for any Lot which is not in accordance with the provisions of this section shall not be void, but the Association shall have the right to reformation of such Lease to conform it to the provisions of this section. The Association shall also have the right to reimbursement for damages from any Owner for all damages or injury (including a reasonable attorneys' fee) resulting to the Association from any failure of a lease to conform to this section. Any Owner who shall lease its Lot in accordance with the provisions of this Declaration shall remain personally liable in the manner set forth in this Declaration for any and all charges, costs and expenses properly charged against said Lot during the time of occupancy of any tenant or subtenant of said Owner.

5.8 Parking. The following apply to Vehicle parking within the Project:

5.8.1 Unlicensed or Inoperable Vehicles. No Vehicle which is inoperable or unlicensed shall be allowed within the Project, unless said Vehicle is stored inside an Owner's garage.

5.8.2 Parking on Roads. No Vehicle, inoperative or operative, shall be parked or placed within the Common Area, including Roads, except temporarily on a Road if the Vehicle belongs to a guest or invitee of an Owner, but not for more than any forty-eight hour period, and only for hours such as the Association may designate, which designated hours may be fewer than twenty-four in any single day.

5.8.3 Limited Common Areas: Patio Areas. No Vehicle, inoperative or operative, shall be allowed upon any Limited Common Area, Patio Area, or any other part of a Lot except for a Unit driveway and/or the interior of any garage.

5.8.4 Unit Driveways. In general, Vehicles may be parked temporarily in the driveway of a Unit; provided however, (i) only one Vehicle may be parked overnight in a driveway wide enough for only one auto, and no more than two Vehicles may be parked overnight in a driveway wide enough for two or more autos, and (ii) no Vehicle may be parked in a driveway for more than thirty (30) days within any sixty (60) day period and each driveway must be without any Vehicle on it overnight for at least twenty (20) days within any sixty (60) day period.

5.8.5 Recreational Vehicles. Notwithstanding any of the foregoing, recreational vehicles, boats, travel trailers and similar vehicles ("RVs") may not be parked within the Project, except within the garage of a Unit or temporarily in the driveway of a Unit, but not in any such driveway for more than forty-eight (48) hours within any one week period.

5.8.6 Access Restriction. No Vehicle belonging to an Owner or his guests, tenants, licensees or invitees shall be parked in such a manner as to impede or prevent ready access to any other Owner's Lot or Unit driveway.

5.8.7 Removal of Inoperative Vehicles. Any Vehicle which remains so placed as to be in violation of any of the foregoing for the time period provided above, or if no time period shall have been specifically provided, for over 24 hours (or in case of the Access Restrictions for 4 hours), consecutively or cumulatively within any five day period, after personal notice of such violation given by the Association (i) to the owner of the Vehicle, or (ii) to the Owner in whose household or whose guest or invitee is the owner of the Vehicle, or (iii) if neither the Owner, his guest or his invitee is present at the Project or able to receive notice, then on the Vehicle in a conspicuous location; shall be subject to removal and storage by the Association, at the expense of the owner of the Vehicle, or, if owner of the Vehicle is not an Owner, then at the expense of the Owner in whose Unit the owner of the Vehicle is a guest, tenant, licensee, or invitee, which cost and expense shall be payable within a reasonable time and shall also be a lien against said Owner's Lot and the personal liability of the Owner.

5.8.8 Parking Regulations. All persons operating a Vehicle in the Project shall be subject to and obey posted parking regulations. The Association shall have the right to promulgate such Regulations consistent with this Declaration as may be necessary to provide for the safe use of Vehicles within the Project.

5.8.9 Repair Prohibited. No Owner, its guest or invitees, shall use any portion of the Project (except the interior of a garage for repairs to the Owner's personal Vehicle) for any mechanical work or maintenance upon any Vehicle, except emergency repairs necessary to make such Vehicle operable.

5.9 Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste and such materials shall not be kept except in covered containers. All trash containers shall be covered and kept screened from view from the street in suitable enclosed areas, within each Unit, whether Interior or Exterior, except during collection. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. The burning of rubbish, leaves or trash within the Project is prohibited. No unsightly material or objects are to be stored on any Lot.

5.10 Maintenance Cooperation. No Owner shall interfere with activities of the Association with respect to Limited Common Areas, including the grading, landscaping, decorating, maintaining, caring for, repairing, replacing, constructing or reconstructing or cleaning of any Limited Common Areas in fulfillment of the duties, obligations and responsibilities of the Association towards Limited Common Areas set forth herein. Owners shall not obstruct Limited Common Areas and shall keep Limited Common Areas free from items which might interfere with the activities of the Association, including without limitation tables, chairs, lawn games and other recreational items. In order to carry out the duties, obligations and responsibilities of the Association towards Limited Common Areas set forth in this Declaration, the Association may at its election, without liability, and at such times as are reasonable, move any such objects from the Limited Common Areas to the Unit driveway or Patio Area or request the Owner of a Lot to remove such objects from the Limited Common Areas.

5.11 Unit Exterior. Exterior antennas are prohibited. Exposed metal flues, vents, ventilator or other metallic rooftop protrusions shall be coated or painted with a neutral color which will blend harmoniously with the surrounding landscaping and related improvements. Satellite reception dishes will be allowed provided they are placed in a Patio Area and placed or screened so they are reasonably screened from neighboring properties. The location of satellite reception dishes and any screening thereof must be approved by the Architectural Control Committee as part of the Unit Exterior. All power lines and similar type cables shall be buried underground.

5.12 Pets or Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets, two or less in total number, may be kept provided that they (i) are not kept, bred or maintained for any commercial purpose, (ii) are kept within the Unit Interior, and (iii) are allowed by local ordinance. Notwithstanding the foregoing, no animals or fowl may be kept on the property which result in an annoyance or are obnoxious by noise, smell or otherwise to Owners. When outside of any Unit Interior, all pets must be kept controlled, on a leash and in the presence of an Owner or a designee of the Owner. An Owner or a designee of an Owner keeping a pet or animal shall ensure that no droppings, manure or any other waste in any form from animals or pets which such Owner keeps is placed or left at any place within the Project, and any Owner or a designee of an Owner keeping a pet or animal shall promptly remove and/or make sanitary any violation of this provision. The provisions of this section may be made more restrictive by Regulation.

5.13 Construction and Sales Exemptions. During the course of the actual construction and sale of any of the permitted structures or improvements within the Project, the provisions, covenants, conditions and restrictions contained in this Declaration shall be deemed waived to the extent reasonably necessary or convenient to permit such construction and sales, in addition to any other specific exemption from these covenants and restrictions for construction and sales activities of Declarant as may be mentioned herein. However, during the course of such construction and sales nothing shall be done which will result in a violation of any of said provisions, covenants, conditions or restrictions upon completion of the construction. Any person involved in the construction of any permitted structures or improvements that shall cause damage to any portion of the Project shall be responsible to pay for the repair and/or replacement of such damage.

5.14 Regulations. Each Owner, its guests, tenants, licensees and invitees shall comply strictly with all Regulations. Each Owner shall be responsible for the actions of its guests, tenants, licensees and invitees, any and all persons related or associated to an Owner who reside in the Unit or are present upon the Project and the guests, tenants, licensees and invitees of any such person.

ARTICLE VI Architectural Standards

6.1 Location of Unit. A Unit shall be located completely within the area designated on the Map as "Private Ownership" for such Lot; provided, however, that driveways and side-walks applicable to such Unit shall be permitted to extend outside such Private Ownership area as may be reasonably required to permit such driveways and side-walks to provide access to the Unit from Roads and side-walks which provide access to the Unit. Upon receipt of written request from any Owner in accordance with Section 6.4, below, the Board may, in its sole discretion, grant a variance to an Owner to allow the Unit Exterior and/or the Patio Area to encroach upon the Limited Common Areas no more than two feet on the Sidel yard area and no more than five feet in the Rear yard area. Any such encroachment shall also require the approval of municipal building and zoning authorities. The criteria for granting any such encroachment shall include, but not be limited to, aesthetic effect, consent of Owners of adjacent Lots, remaining Sidel yard distance from Units adjacent Lots, and proximity of Unit to Golf Course. A memorandum of any such approval granted by the Board and by the municipal building and zoning authorities shall be recorded with the Davis County Recorder and shall specifically reference the Lot involved.

6.2 Architectural Standards. It is intended that any and all improvements that are constructed within the Project be harmonious and compatible with respect to the external design of all proposed structures, topography, grade, quality of materials, size, height, color, roof materials and color, etc. Notwithstanding the relative subjectivity of such matters, Declarant hereby intends to establish procedures for the determination of such matters which will be applicable to the Project. The materials of the Unit Exterior (excluding roof, soffit, and fascia) shall consist of no less than 80% brick. Therefore, no construction of a Unit, improvements to any Patio Area, fences around any Patio Area, driveway, sidewalk, Common Facility or any other improvement to any Lot, except Landscape Improvements, nor any addition, change, alteration, modifications, remodeling or renovation (including any change in color of any Unit Exterior) to any of the foregoing shall be commenced without the prior written consent of the Architectural Control Committee. The Association shall be entitled to injunctive relief from a court of competent jurisdiction to preclude such construction prior to the consent of the Architectural Control Committee.

6.3 Enforcement of Architectural Standards. The Architectural Control Committee (the "Committee") shall be responsible for the formulation and implementation of architectural standards for the Project. Until the date (the "Change Date") which shall be the first to occur of (i) the date that there shall cease to exist any Class B Members, as set forth in Section 7.4.2, or (ii) December 31, 2008, the Declarant shall have the right to designate the members of the Committee. The initial Committee shall consist of four (4) members: Stanley M. Sanoor, Wilford W. Cannon, Steven E. Sanoor and W. Scott Kjar. Declarant shall have the right to appoint new members in its discretion. Prior to the Change Date, two (2) members of the Committee shall constitute a quorum sufficient for the conduct of business. The Committee may unanimously designate one member of such

Committee to act for the Committee. After the Change Date, the rights, duties and responsibilities of the Committee shall be automatically transferred to and assumed by the Board and the business of the Committee shall be conducted in the manner provided in the Bylaws for the conduct of the business of the Board, provided, however, that no notice of a meeting of the Board acting solely in its capacity as the Architectural Control Committee need be given to any party other than the members of the Board. The Committee or the Board, as applicable, is hereby authorized, but not required, to retain the services of one or more consulting architects, landscape architects or urban designers, licensed to practice in the State of Utah, to advise and assist the Committee in performing the review functions prescribed in this Declaration and to carry out the provisions set forth herein.

6.4 Approval Procedure. Any and all plans and specifications showing the nature, kind, shape, height, materials, colors and location of each and every Unit or any other improvement to be constructed upon the Property shall be submitted to and approved by the Committee before any construction or renovation shall be commenced, erected, or maintained. Upon receipt by the Committee of a written request for approval (including all applicable plans and specifications), the Committee shall, within thirty (30) days after receipt of a complete request for approval, either: (a) provide written approval of the plans and specifications as submitted, or (b) provide written notification that the plans and specifications are not acceptable and shall specify the reasons for such decision. Revised plans and specifications may be resubmitted as necessary to obtain approval. Upon such resubmission, the Committee shall then have an additional fifteen (15) days after receipt of said revisions to approve or disapprove same. Failure to give any written notice of disapproval within the periods provided for above shall constitute approval thereof by the Committee. No changes or deviations in or from plans and specifications approved by the Committee shall be made without the prior written approval of the Committee.

6.5 No Responsibility. Each Owner will be responsible for obtaining any building permits as may be required by applicable law. No approval by the Committee shall be deemed to constitute any express or implied acknowledgement, warranty or representation by the Association, the Board, the Committee or any of its agents, representatives or designees or any one of them as to the compliance with any building code or construction code or for technical sufficiency or adequacy or safety of the proposed improvements or any of its component parts or any other physical condition or feature pertaining to the improvements proposed to be constructed by the Owner. It is expressly understood that such approval shall be only for the purposes of providing for architectural and design consistency throughout the Project.

6.6 Minimum Size of Unit. Each Unit shall have a garage that has a minimum of at least two (2) car bays. No Unit shall be permitted on any Lot wherein the stacking (excluding any basement area) is more than two (2) stories in height, and the ground floor area of the main structure of the Unit, exclusive of garages and open porches, is less than the following area measurements:

- (a) For a single story Unit, 2,000 square feet, not including basement area. The foregoing notwithstanding, due to the unique configuration of Lot 13, the area of the main structure of the Unit on Lot 13, exclusive of garages and open porches, may be as low as 1,750 square feet;
- (b) For a two story Unit, 1,750 square feet on the main floor with the aggregate footage of the upper two (2) floors (including the main floor level) of the structure totaling a minimum of 2,600 square feet;

6.7 Construction Time. The construction time for the exterior portion of any structure, shall not exceed eighteen (18) months from start to finish (the "Construction Period"). "Start" shall be the date upon which any foliage is cut or removed in anticipation of construction or where any excavation begins, whichever shall first occur. All building debris, excavation, dirt, etc. associated with the building process shall be removed within the Construction Period. Such debris and excavation dirt shall not be permitted on any of the Roads or sidewalks.

ARTICLE VII The Association

7.1 The Association. The administration of this Project shall be through the Association. The Association shall operate in accordance with the laws of the State of Utah and with the Articles and Bylaws which have been adopted in accordance therewith and as such are consistent with this Declaration. A true copy of the duly adopted Bylaws of the Association shall be available to any Owner from the Association.

7.2 Membership. Each Owner shall be entitled and required to be a Member of the Association. Membership shall begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner. If title to a Lot is held by more than one person, the Membership appurtenant to that Lot shall be shared by all such persons in the same proportionate interest and by the same type of tenancy in which title to the Lot is held. An Owner shall

be entitled to one Membership for each Lot owned by him. Each Membership shall be appurtenant to the Lot to which it relates and shall be transferred automatically by conveyance of that Lot. Ownership of a Lot within the Project cannot be separated from Membership in the Association appurtenant thereto, and any devise, conveyance, or other disposition of a Lot shall be construed to be a devise, conveyance, or other disposition, respectively, of the Owner's Membership in the Association and rights appurtenant thereto. No person or entity other than an Owner may be a Member of the Association, and Membership in the Association may not be transferred except in connection with the transfer of a Lot.

7.3 Management. The affairs of the Association shall be managed by a Board of Trustees consisting of three (3) individual persons, or such other number as shall be set forth by amendment to the Articles and Bylaws. The Board of Trustees shall be elected and qualified by the Association in accordance with the provisions of the Bylaws. The Association shall act only through the Board of Trustees and officers duly elected thereby; and an Owner shall, in the capacity of an Owner and not as an officer of the Association, have the authority to bind the Association. The Board of Trustees shall initially consist of persons appointed by Declarant. At the time of the first annual meeting of the Members, the Members (including Declarant) shall elect, in accordance with the Bylaws, a Board of Trustees replacing the initial Board of Trustees as defined in the preceding sentence. The first meeting shall be held not later than one (1) year from the date of the issuance of the deed to the first Lot to an Owner other than Declarant. The terms of these first elected members of the Board shall be fixed so that (i) the term of one member shall be one (1) year, (ii) the term of one member shall be two (2) years, (iii) and the term of one member shall be three (3) years. Nominations for election to the Board shall designate the length of the term for which such person is being nominated. At the expiration of this first term of office, successors shall be elected to serve for a term of three (3) years.

7.4 Voting Rights. Each Owner shall be entitled to vote on all matters brought before the Association for a vote thereon. The vote of the Owner entitled to cast the votes appurtenant to a Lot shall be determined in accordance with procedures set forth in the Bylaws. No Owner shall be denied the exercise of its right to vote or participate at any meeting of the Owners solely upon the failure of said Owner to pay Assessments levied against such Owner. The Association has two classes of voting membership.

7.4.1 Class "A." "Class A Members" are all Members with the exception of Declarant. Each Lot shall be entitled to one (1) vote. The number of votes appurtenant to each Lot shall have a permanent character and shall not be altered without the unanimous written consent of all Owners expressed in an amendment to this Declaration duly recorded. The Members which constitute the Owners of a Lot shall collectively be entitled to cast the one (1) vote applicable to said Lot. Except as provided for the Class B Member, no Lot shall have more than one (1) vote.

7.4.2 Class "B." The "Class B Member" is the Declarant with respect to all Lots owned by Declarant. The number of votes which the Class B Member shall be entitled to cast during a vote of the Owners shall be three (3) votes for each respective Lot owned by Declarant. The Class B membership will cease and be converted to Class A membership upon the first to occur of (i) the recording of conveyances to purchasers of eleven (11) of the thirteen (13) Lots subject to this Declaration, (ii) the expiration of seven (7) years from the date of the recording of the first conveyance of a Lot to a purchaser, or (iii) when, in its sole discretion, the Declarant so determines and records a certificate declaring Declarant's Class B Membership to be terminated. At the time of such cessation of Declarant's Class B membership and conversion to Class A membership, Declarant shall give written notice to the Board of Trustees.

7.5 Power of Attorney and Amendments. Each Owner makes, constitutes and appoints the Association the true and lawful attorney in and of said Owner to act in said Owner's name, place and stead to make, execute, sign, acknowledge and file with respect to the Project such amendments to this Declaration and the Map as may be required by Law or which may be approved by vote taken pursuant to the provisions of this Declaration.

7.6 Rights and Duties. The Association shall have general responsibility for (i) the exclusive management, control, maintenance and operation of all areas of the Project, excluding the Units, (ii) the enforcement of this Declaration, the Bylaws and the Regulations, as may be reasonably necessary, (iii) the maintenance of landscaping of all Common Areas and Limited Common Areas and any and all sprinkling systems related to such landscaping, and (iv) all other acts required of the Association under this Declaration, the Articles, Bylaws or Regulations, or by law, and to exercise such rights as the Association may have and as may be reasonably necessary in the performance of its responsibilities.

7.7 SOURCE OF OPERATING FUNDS. The Association may obtain and pay for out of the Association Fund the services of such personnel as the Association shall determine to be necessary or desirable for the proper operation of the Project, whether such personnel are employed directly by the Association or by any person or entity with whom or which it contracts. The Association may also obtain and pay for out of the Association Fund legal and accounting services necessary or desirable in

connections with the operation of the foregoing. The Association may acquire and pay for out of the Association Fund insurance, water, sewer, garbage collection, electrical, gas, and other necessary or desirable goods, services, and utility services, insurance, bonds, and other goods and services necessary to or desired for its activities with respect to the Project.

7.8 Maintenance and Control of Common Areas. The Association, subject to the rights and duties of the Owners as set forth in this Declaration, shall be responsible for the exclusive management, control, operation and maintenance of the Common Areas, and Common Improvements and Common Facilities, and shall keep the same in a good, clean, attractive, safe, and sanitary condition, order, and repair. Such maintenance shall specifically include, but not by way of limitation, responsibility for maintenance, repair and replacement of all Roads, including snow removal. All goods and services procured by the Association in performing its responsibilities under this section shall be paid for with funds from the Association Fund.

7.9 Property Ownership. The Association may acquire (by purchase, lease or otherwise) and hold real, personal and mixed property of all types for the use or benefit of all Owners, and may dispose of such property or any part thereof by sale or otherwise. The costs of acquiring all such property, including all Common Improvements, shall be paid for out of the Association Fund, and all proceeds from disposition thereof shall be part of the Association Fund.

7.10 Agreements. The Association may, without the vote or consent of the Owners or of any other person, grant or create on such terms as it deems advisable, utility and similar easements and rights of way over, under, across and through the Common Areas and Roads and enter into such other agreements as it shall deem in the interest of the Owners for the operation of the Project as a first class planned unit development, provided that no such agreement shall be in derogation of any Owner's rights under this Declaration.

7.11 Adoption of Regulations. The Association may establish reasonable procedures, rules and regulations ("Regulations") governing the use of the Lots, Common Areas, Common Improvements and Roads provided, however, that such Regulations shall be consistent with the rights and obligations established by this Declaration and that copies of such Regulations are furnished to Owners when first promulgated or amended by the Association. Regulations shall be void and of no effect to the extent that such are inconsistent with the rights and obligations established by this Declaration.

7.12 Manager. The Association may by written contract delegate in whole or in part to a professional Manager such of the Association's duties, responsibilities, functions, and powers hereunder as are properly delegable. The services of any Manager retained by the Association shall be paid for with funds from the Association Fund. The written contract by which the Manager shall be engaged shall:

(a) Authorize and obligate the Manager to perform such of the duties and obligations of the Association specified in this Article as shall be delegated property to the Manager hereunder.

(b) Provide for a term of not more than two (2) years, except that such agreement may provide that the term will be automatically renewed for successive annual terms unless notice of non-renewal is given by either party not then in default thereunder no later than ninety (90) days prior to the end of the term thereof. The agreement shall be subject to termination by the Association (i) at any time, for cause, upon the vote of a majority of members of the Board of Trustees; and (ii) at any time, with or without cause, if required to do so by the affirmative vote of more than fifty percent (50%) of the Total Votes of the Association.

(c) Provide that the Manager may resign only after giving the Association written notice of its intended resignation at least ninety (90) days prior to the effective date therefor.

(d) Provide for the compensation to be paid to the Manager.

(e) Contain such other matters as the Association and the Manager shall deem appropriate and desirable.

In the event that the Manager shall dispute a termination by the Association pursuant to subparagraph (b) of this subsection, the dispute shall be submitted to arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

7.13 Limitations on Association's Powers and the Manager. Notwithstanding the powers of the Association as set forth in this Article, neither the Association (nor the Manager when acting on behalf of the Association) shall enter into a contract

with a third person or entity whereby such person or entity will furnish goods or services for the Project for a term longer than one (1) year unless authorized by at least fifty-one percent (51%) of the Owners, except for:

- (a) The agreement authorized pursuant to Section 7.12.
- (b) A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Service Commission; provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate.
- (c) Prepaid casualty and/or liability insurance policies not to exceed three (3) years duration provided that the policy permits short-notice cancellation by the insured.

7.14 **Financial Records and Disclosure.** -The Association shall cause financial statements for the Association to be regularly prepared and cause copies thereof to be available to all Owners.

ARTICLE VIII Limited Common Area Maintenance

8.1 **Landscape Plan.** Declarant shall develop a general landscape plan (the "Landscape Plan") which shall show all Landscape Improvements to be installed and maintained in the Limited Common Areas. Once adopted by Declarant, any amendments to the Landscape Plan shall be approved by the Board.

8.2 **Landscaping.** All portions of a Lot, excluding the Unit and Patio Area, shall be landscaped prior to the expiration of the Construction Period, as defined in Section 6.9. Any and all Landscape Improvements to be installed upon the Project shall made in accordance with the Landscape Plan. Landscape Improvements for each Lot shall include an automatic sprinkler irrigation system. Upon completion of the planting, installation and/or construction of all Landscape Improvements required for a Lot in accordance with the Landscape Plan, such Lot shall be deemed to be a "Landscaped Lot."

8.3 **Cost of Landscaping.** The cost of the original installation of Landscape Improvements on a Lot shall be paid by the Owner. An Owner shall be responsible to pay the cost of replacing lawns, trees or shrubs or any other Landscape Improvements which must be replaced within six (6) months of the date of original planting on the Lot. Thereafter, such replacement shall be a Landscape Expense.

8.4 **Failure to Complete Landscaping.** In the event that an Owner shall fail to cause the Landscape Improvements to be installed as required by this Article, and such failure shall continue for a period of six (6) months from the date of written notice from the Association of such failure, then the Association shall have the right to cause Landscape Improvements to be planted, installed and/or constructed on said Owner's Lot at the cost and expense of the Owner. The cost and expense of such installation shall be paid by the Owner within fifteen (15) days of delivery of written notice of the amount thereof and if unpaid such amount shall become a lien upon the Lot subject to accrual of interest and enforcement in accordance with the provisions hereof. The Association shall have the right, but not the duty, to enforce payment of such amount prior to the actual installation of the applicable Landscape Improvements.

8.5 **Limited Common Area Maintenance.** After the initial installation of the Landscape Improvements, the Association shall be responsible for any and all maintenance, including replacement and replanting, required in connection with the Landscape Improvements. The costs and expenses of the activities of the Association described in this Article shall be a Landscape Expense and paid with funds from the Association Fund. No Owner shall have the right to elect to maintain Landscape Improvements upon Limited Common Area of said Owners Lot.

8.6 **Control of Landscape Improvements.** Notwithstanding that the Owner of each Lot shall have paid the cost for the initial installation of the Landscape Improvements located in the Limited Common Area within said Owner's Lot and such Owner shall own the real property which comprises such Lot in fee simple and shall have the exclusive right to the use and enjoyment of the Limited Common Area within such Lot, subject to the Limited Common Area Easement, the Association is hereby granted complete control of and responsibility for all the Landscape Improvements, even though such Landscape Improvements, or part of them, may be deemed fixtures attached to such Lot. As such, the Association shall have the right to remove and replace any Landscape Improvements, to redesign, replace and replant the landscaping upon on or more of the Lots and to take such other actions as the Association shall determine as necessary or desirable with respect to providing for the establishment and implementation of a uniform plan for the landscaping of the Limited Common Areas.

8.7 Exceptions to the Plan. The Board of Trustees may make exceptions ("Landscape Exception") to the Landscape Plan for individual Owners which shall be applicable to the Limited Common Area within such Owner's Lot. An Owner may apply for a Landscape Exception by submitting to the Board a written request for an exemption. Such request shall include plans and specifications in detail sufficient to inform the Board of the nature, scope, composition, appearance, cost of installation and cost and expense of maintenance of such Landscape Exception. Upon receipt by the Board of a written request for a Landscape Exception, the Board shall, within thirty (30) days after receipt of such request either (a) provide written approval of the Landscape Exception as submitted, or (b) provide written notification that the proposed Landscape Exception is not acceptable and shall specify the reasons for such decision. Revised requests for a Landscape Exception may be resubmitted as necessary to obtain approval. Upon such resubmission, the Board shall then have an additional fifteen (15) days after receipt of said revisions to approve or disapprove same. Failure to give any written notice of disapproval within the periods provided for above shall constitute approval thereof by the Board. No changes or deviations in or from the Landscape Exception once approved by the Board shall be made without the prior written approval of the Board. Approval by the Board may include such requirements as the Board deems reasonable under the circumstances, including a requirement that appropriate adjustments be made in payment of costs and expenses incurred in the maintenance of Landscape Improvements within the Landscape Exception. The Board shall be under no obligation to approve any request for a Landscape Exception if the Board shall determine, in its discretion, that the request is not in the best interest of the overall Project.

8.8 Maintenance Prior to Construction of Unit. There shall be no Limited Common Area on any Lot on which a Unit has not been constructed. Therefore, prior to the first planting, construction and/or installation of the Landscape Improvements, the Owner of each such Lot shall be responsible for the maintenance of such Lot, including, without limitation, weed control and abatement, removal of refuse and other debris and rodent control; provided, however, that no Owner shall be required to install Landscape Improvements upon any such Lot until such installation shall be required in accordance with Section 8.2 hereof.

ARTICLE IX Assessments

9.1 Obligation to Pay Assessments. The Declarant, for each Lot owned by it, and each Owner of any Lot by the acceptance of instruments of conveyance and transfer thereof, whether or not it be so expressed in said instruments, shall be deemed to covenant and agree with each other and with the Association to pay to the Association its proportionate share of any and all costs and expenses incurred in the ownership, operation and/or maintenance of any and all parts of the Project, including specifically but without limitation all Association Expenses, Common Expenses, Landscape Expenses and all other expenses, however denominated, incurred by the Association in the performance of the Association's duties, responsibilities, rights, powers and privileges. In the case of joint ownership, each Owner or joint owner shall be jointly and severally liable for all Assessments. All items of expense, whether Association Expense, Common Expense or Landscape Expense, must be approved by a majority of the Board, but only to the extent reasonably necessary to insure that the Board shall be responsible for and control the use of monies collected pursuant to this Declaration. All Assessments shall be made by the Association for the purposes provided in this Declaration and shall be fixed, established and collected from time to time as provided in this Article. **AN OWNER'S OBLIGATION TO PAY ASSESSMENTS LEVIED IN ACCORDANCE WITH THE PROVISIONS OF THIS DECLARATION SHALL COMMENCE IMMEDIATELY UPON THE RECORDING WITH THE DAVIS COUNTY RECORDER OF A DEED CONVEYING TITLE TO SAID OWNER. THE OBLIGATION COMMENCES AT SUCH TIME WHETHER OR NOT A RESIDENCE HAS BEEN OR IS THEN BEING CONSTRUCTED ON THE LOT AND WITHOUT REGARD TO WHEN OR IF SUCH OWNER SHALL TAKE ACTUAL OCCUPANCY OF THE LOT OR UNIT.**

9.2 Regular Assessments. The Association's recurring costs of the ownership, operation and/or maintenance of the Project shall be paid through an annual Assessment to all Owners, called a Regular Assessment. Regular Assessments shall be computed and assessed on an annual basis against all Lots as set forth in this section. Regular Assessments shall be based upon advance estimates of the Association's cash requirements to provide for payment of all estimated Association Expenses.

9.2.1 Determination of Regular Assessments. Until the Landscape Completion Date, Common Expenses and Landscape Expenses shall be separately estimated and separately apportioned as required in Sections 9.2.2, 9.2.3 and 9.2.4. Upon the Landscape Completion Date, the Association, in its discretion, may, but shall not be required to, cease to separately account for Common Expenses and Landscape Expenses and such amounts may then be combined to constitute Association Expenses. Until such time as Common Expenses and Landscape Expenses shall be combined, that portion of Common Expenses allocated to a Lot pursuant to Section 9.2.3 and that portion of Landscape Expenses allocated to a Lot pursuant to Section 9.2.4 shall be combined to be the Regular Assessment for such Lot. Until such time as all Lots shall be landscaped and, therefore,

subject to payment of Landscape Expenses, the amount of the Regular Assessment for Lots with the same Percentage Interest may vary. If and when the Common Expenses and Landscape Expenses shall be combined, that portion of Association Expenses allocated to a Lot pursuant to Section 9.2.2 shall be the Regular Assessment for such Lot.

9.2.2 Apportionment of Association Expenses. At such time as the Association shall have elected to cease to separately account for Common Expenses and Landscape Expenses and such amounts have then been combined to constitute Association Expenses, Association Expenses shall be apportioned among and assessed to each Lot in proportion to such Lot's Percentage Interest.

9.2.3 Apportionment of Common Expenses. Common Expenses shall be apportioned among and assessed to each Lot in proportion to such Lot's Percentage Interest.

9.2.4 Apportionment of Landscape Expenses. After the Landscape Completion Date, Landscape Expenses shall be apportioned among and assessed to each Lot in proportion to such Lot's Percentage Interest. Prior to the Landscape Completion Date, Landscape Expenses shall be apportioned pro rata among and assessed to all Landscaped Lots. In the apportionment of Landscape Expenses prior to the Landscape Completion Date, the pro rata allocation shall change from time to time based upon the total number of Landscaped Lots.

9.3 Annual Budget. Regular Assessments shall be determined on the basis of a fiscal year beginning January 1 and ending December 31 next following. It is provided however that the first fiscal year shall begin January 1, 1999. On or before November 1, 1999 and on or before November 1st of each year thereafter, the Association shall prepare and furnish to each Owner or cause to be prepared and furnished to each Owner, an operating budget for the upcoming fiscal year. The budget shall include the estimated Association Expenses for such fiscal year, anticipated receipts (if any) and any deficits or surpluses from the prior operating period. The budget shall serve as the supporting document for the Regular Assessment for the upcoming fiscal year and as a major guideline under which the Project shall be operated during such annual period.

9.4 Notice and Payment. Except with respect to the first fiscal year, the Association shall notify each Owner as to the amount of the annual Regular Assessment, if applicable listing separately the amount of the Common Expense and the Landscape Expense, against its Lot on or before December 1 each year for the year beginning on January 1 next following. Each Regular Assessment shall be due and payable on or before the first day of each respective year. It is provided, however, that the annual Regular Assessment for the first fiscal year shall be based upon such portion of the first fiscal year as is practicable by reason of the construction of the Project and such portion of Association Expenses as are anticipated to be incurred in such year which shall then be apportioned to the respective Lots as provided in Section 9.2 and shall be payable in such installments and at such times as the Association may determine. Each Regular Assessment may be payable in twelve (12) equal monthly installments, with one such installment due on the first day of each calendar month during the fiscal year to which the Regular Assessment relates. Any Owner which shall not have paid his annual Regular Assessment in full on or before January 1 of each year shall be deemed to have elected to pay such Regular Assessment in twelve (12) equal monthly installments. The Association may, but shall not be required to send out monthly statements to any Owner and each such installment shall be due and payable on the first day of each month without notice or demand. Any monthly installment of any Regular Assessments which shall not have been received by the Association on or before the fifth day of any month in which it is due shall be assessed a late charge in an amount not less than Five Dollars (\$5.00) for each such late payment. The amount of the late charge shall be subject to adjustment from time to time by the Association, provided that such amount shall not be in an amount in excess of the amount of the maximum then permitted under the Utah Uniform Consumer Credit Code. The amount of any assessment which is not paid when due shall bear interest at the rate of one and one-half percent (1.5%) per month from the date each such installment becomes due until same shall be paid. Late charges and interest on any unpaid monthly installments of any Regular Assessment may be charged according to procedures established by the Association, whether or not monthly statements shall be sent. If an Owner shall be in default in payment of any installment, the Board may accelerate the remaining installments due within that calendar year upon ten days written notice to such Owner, whereupon the entire unpaid balance of such Regular Assessment shall become due upon the date stated in such notice. Failure of the Association to give timely notice of any Regular Assessment as provided herein, shall not be deemed a waiver or modification in any respect of the provisions of this Declaration or a release of any Owner from the obligation to pay such Regular Assessment. It is provided, however, that the date on which payment shall become due in such case shall be deferred to a date designated by the Association, which date shall be not less than fifteen (15) days after notice of such Regular Assessment shall have been given to the Owner in the manner provided in this Declaration. The Association shall have the right to establish a fee for costs and expenses incurred in maintaining records of the installment payment of Regular Assessments, which fee shall be charged (in addition to the Regular Assessment) only to Owners who pay such Regular Assessments on an installment basis.

9.5 Inadequate Funds. In the event that the Association Fund shall prove inadequate at any time for whatever reason, including nonpayment of any Owner's Regular Assessments, the Association may levy additional Assessments in accordance with the procedure set forth in Section 9.6 provided, however, that the vote therein specified shall be unnecessary.

9.6 Special Assessments. In addition to the Regular Assessments authorized by this Article, the Association may levy Special Assessments at any time and from time to time, upon the affirmative vote of more than fifty percent (50%) of the Total Votes of the Association. Such Special Assessments shall be in such amounts and shall be payable over such periods as the Association may determine and which shall have been approved in such vote. Such Special Assessments shall be levied for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Common Areas, Common Improvements, Common Facilities or Landscape Improvements, or any part of any of these, or for any other expenses incurred or to be incurred as provided in this Declaration. This section shall not be construed as an independent source of authority for the Association to incur expenses, but shall be construed to prescribe the manner of assessing for expenses authorized by other sections or articles hereof. Any amounts assessed pursuant hereto shall be assessed to Owners in proportion to their respective Percentage Interest. Notice in writing of the amount of such Special Assessments and the time for payment thereof shall be given promptly to the Owners, and no payment shall be due less than thirty (30) days after such notice shall have been given. All unpaid portions of any Special Assessment shall bear interest at the rate of one and one-half percent (1.5%) per month from the date such portions become due until paid. All funds received from Special Assessments under this section shall be used specifically for the purpose for which such Special Assessment shall be levied or returned to the Owners.

9.7 Collection of Assessments. In addition to any other right or remedy specifically set forth herein for the collection of unpaid Assessments, the Association shall have the right to establish procedures for the collection of Assessments, including charging of interest and late charges, and shall have any and all rights and remedies provided at law or equity for the collection of debts. Any or all such rights shall be exercised in such manner, on one or more occasions and in such order as the Association shall elect, without waiver of any other right, remedy or lien set forth in this Declaration. Any failure of the Association to exercise any such right on one or more occasions shall not constitute a waiver of the right to so exercise such right in the future. In the event that the Association shall file a lien, commence legal proceedings or refer the collection of any unpaid Assessment to an attorney for collection thereof, then interest shall be deemed to accrue on any unpaid portion of the Assessment from the first day of the fiscal year for which any Regular Assessment shall be due or from the due date established for any other Assessment levied in accordance with the provisions of this Declaration.

9.8 Lien for Assessment. All Assessments, together with interest thereon as provided herein, shall be secured by a lien on the applicable Lot in favor of the Association. To evidence a lien for monies assessed pursuant to this Declaration, the Association shall prepare a written notice of lien setting forth the amount of the Assessment, the date due, the amount remaining unpaid, the name of the Owner of the Lot and a legal description of the Lot. Such notice shall be signed by a duly authorized officer of the Association, acknowledged and shall be recorded in the office of the County Recorder of Davis County, State of Utah. No notice of lien shall be recorded until there is a delinquency in payment of an Assessment. Such lien may be enforced by sale of the Lot encumbered by the lien at a foreclosure sale conducted by the Association and conducted generally in accordance with the provisions of Utah law applicable to the exercise of powers of sale for foreclosure under a deed of trust or in any other manner permitted by Utah law. In any such sale by foreclosure, the Owner shall be required to pay the Association's costs and expenses of such proceeding (including reasonable attorneys' fees) and such costs and expenses shall be secured by the lien herein provided whether or not same shall be specifically set forth therein. The Owner shall also be required to pay to the Association any Assessments against the Lot which shall become due during the period of foreclosure or sale, and all such Assessments shall be secured by the lien herein provided. The Association shall have the right and power to bid in any foreclosure or other sale, and to hold, lease, mortgage or convey the subject Lot. In the event that the Association becomes the Owner of such Lot as a result of such foreclosure and the Owner fails to immediately vacate such Lot, the Owner shall be required to pay a reasonable rental for the Lot and the Association shall be entitled to the appointment of a receiver to collect the rental without regard to the value of security. Upon any foreclosure sale, the Owner or any person in occupancy of the Lot or any portion thereof, shall immediately become a tenant at will of the purchaser at such sale.

9.9 Personal Liability of Owner. The amount of any Regular or Special Assessment against any Lot, together with accrued interest and late charges, against any Lot shall be the personal obligation of the Owner of such Lot to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any such personal obligation by waiver of the use or enjoyment of any of the Common Areas or Limited Common Areas or by abandonment of said Owner's Lot or by waiving any services or amenities provided for in this Declaration. In the event of any suit to recover a money judgment for unpaid Assessments hereunder, the involved Owner shall pay the costs and expenses incurred by the Association in connection therewith, including reasonable attorneys' fees.

9.10 **Statement of Account.** Upon payment of a reasonable fee not to exceed \$15.00 and upon written request of any Owner, Mortgagee, prospective Mortgagee, or prospective purchaser of a Lot, the Association shall issue a written statement setting forth (i) the amount of the unpaid Assessments, if any, with respect to such Lot, (ii) the amount of the current Regular Assessment and the date or dates upon which installments thereof become due, (iii) the amount of any current Special Assessment and the date or dates upon which the same or portions thereof become due, (iv) any credit for advanced payments or prepaid items, including without limitation the Owner's share of prepaid insurance premiums, and (v) any other charges, costs or expenses, fines, or other amounts then required of, charged to, or levied upon such Owner or such Owner's Lot consistent with the provisions of this Declaration. Such statement shall be conclusive upon the Association in favor of persons who rely thereon in good faith.

9.11 **Personal Liability of Purchaser.** Subject to the provisions of Section 9.10, a purchaser of a Lot shall be jointly and severally liable with the seller thereof for all unpaid Assessments against such Lot up to the time of the grant or conveyance; provided, however, that this section shall not prejudice the purchaser's right to recover from the seller the amount of any such Assessments actually paid by the purchaser.

9.12 **Amendment of this Article.** This Article IX shall not be amended unless the Owners holding at least eighty percent (80%) of the Total Votes of the Association shall consent and agree to such amendment upon a vote of the Owners held for such purpose. Such vote shall be duly certified by the Board in the written amendment hereto, and said amendment shall be effective upon the recordation thereof in the official records of Davis County, State of Utah.

ARTICLE X Insurance

10.1 **Insurance.** The Association shall obtain and keep in full force and effect at all times at least the types of insurance coverage set forth in this Article to be provided by companies licensed to do business in the State of Utah.

10.2 **Fire and Casualty.** The Association shall obtain a policy or policies of insurance on the Project in such amounts as shall provide for replacement of any Common Improvements, or other property owned by the Association in the event of damage or destruction from the casualty against which such insurance is obtained. Such insurance shall be in accordance with coverage customarily maintained by other planned unit developments similar in location, construction, design, and use, and shall include fire and extended coverage, vandalism and malicious mischief, and such other risks and hazards against which the Association shall deem it appropriate to provide insurance protection. The Association may comply with the above requirements by the purchase of blanket coverage and may elect such "deductible" provisions as in the Association's opinion are consistent with good business practice.

10.3 **Public Liability and Property Damage.** The Association shall obtain a broad form of comprehensive liability insurance coverage, in such amounts (but in no event less than \$1,000,000.00 per occurrence) and in such forms as it deems advisable to provide adequate protection against liability for personal injury, death, and property damage. Coverage shall include without limitation liability for operation of automobiles on behalf of the Association and all activities in connection with the ownership, operation, maintenance, and other use of the Project by the Association.

10.4 **Workers' Compensation.** The Association shall obtain and maintain workmen's compensation and employer's liability insurance and all other similar insurance with respect to employees of the Association in the amounts and in the forms now or hereafter required by applicable law.

10.5 **Fidelity or Bond.** The Association shall purchase, in such amounts and in such forms as it deems appropriate, fidelity insurance or bonds to cover against dishonesty of the Manager, Trustees, officers, or employees of the Association, destruction or disappearance of money or securities and forgery.

10.6 **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.

10.7 **Loss Adjustment.** Exclusive authority to adjust losses under policies hereafter in force on the Project shall be vested in the Association. In no event shall the insurance coverage obtained and maintained by the Association hereunder be brought into contribution with insurance purchased by individual Owners or their Mortgagees.

10.8 Owner Insurance. The Association shall not maintain insurance for any Lot, Unit, or Landscape Improvements, improvements made within any Patio Area, the personal property of any Owner or any contents of any Unit, or for any Vehicles upon the Project which are not owned, maintained, operated, or used by the Association. Said insurance coverage shall be the sole and absolute responsibility of each respective Owner. Therefore, in addition to all other insurance required to be maintained by the Association, each Owner shall obtain, at such Owner's own expense, insurance coverage for the applicable Lot, Unit, Landscape Improvements, improvements made within a Patio Area, the personal property, the personal liability of such Owner and covering such other risks as such Owner may deem appropriate; provided, however, that each such policy shall provide that it does not diminish the insurance carrier's coverage for liability arising under insurance policies obtained by the Association pursuant to this Declaration. If obtainable under industry practice without an unreasonable additional charge for such waiver, all such insurance of the Owner's Lot and risks associated therewith 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, invitees, and guests.

ARTICLE XI Damage or Destruction

In the event any part of the Common Areas or Common Improvements are damaged or destroyed, the Association shall proceed as required by the provisions of this Article. Each Owner shall be responsible to replace and/or reconstruct any damage to any part of the Common Areas or Common Improvements caused by such Owner or its guests, tenants, licensees or invitees.

11.1 Estimate of Costs. As soon as practicable after an event causing damage to or destruction of any part of the Common Areas, Common Improvements, the Association shall obtain complete and reliable estimates of the costs to repair and reconstruct that part of the Project damaged or destroyed.

11.2 Insurance Proceeds. 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, then such repair and reconstruction shall be carried by the Association out in a manner consistent with this Declaration. The Association shall have a duty to cause to be repaired any damage which shall occur to those portions of Common Improvements which are essential for the operation of the Project as a planned unit development such as the Roads, storm drainage systems, sidewalks and other such Common Improvements required for the reasonable use and enjoyment of the Units by the Owners thereof or by applicable law or regulation ("Required Improvements"). The Board of Trustees shall have the right, in the exercise of its reasonable discretion, to determine what Common Improvements shall be deemed to be Required Improvements. In the event the proceeds of such insurance and any reserved portion of the Association Fund subsequently prove to be insufficient to pay the actual costs of such repair and reconstruction of any Required Improvements, the Association shall levy a Special Assessment sufficient to provide funds to pay such actual costs of repair and reconstruction. Such Special Assessment shall be allocated and collected as provided in Section 9.6, except that the vote therein specified shall be unnecessary. Further levies may be made in like manner if the amounts collected or previously reserved (together with the proceeds of insurance) subsequently prove to be insufficient to pay all actual costs of such repair and reconstruction of any Required Improvements. However, 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 which are not Required Improvements, the damage or destruction shall be repaired and reconstructed as provided in this section if, but only if, within one hundred (100) days following the damage or destruction, the Owners shall elect by a vote of more than fifty percent (50%) Total Votes to carry out such repair and reconstruction. If, however, the Owners vote to not repair or reconstruct the Common Improvements which are not Required Improvements, then the Common Area upon which such Common Improvements were located will be landscaped or otherwise repaired only in such manner as shall reasonably be required to remove visual evidence of damage and to remove any unsafe conditions.

11.3 Repair and 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 estimate of costs, commence and diligently pursue to completion the repair and reconstruction of that part of the Project which is damaged or destroyed. The terms repair and reconstruction shall mean in this Article that the parts damaged or destroyed shall be restored or repaired to substantially the same condition in which they existed prior to the damage or destruction.

11.4 Use 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 made pursuant to this Article shall constitute a fund for the payment of costs of repair and reconstruction after casualty. The first money disbursed in payment for cost of repair and reconstruction shall be deemed made from insurance proceeds; and if there is a balance after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Association Fund for the payment of Association Expenses.

11.5 **Amendment of this Article.** This Article shall not be amended unless all of the Owners unanimously consent and agree to such amendment as shall be certified and evidenced in a duly recorded instrument.

ARTICLE XII Condemnation

If at any time or times all or any part of the Project shall be taken or condemned by any public authority under power of eminent domain, the provisions of this Article shall apply. A voluntary sale or conveyance of all or any part of the Project in lieu of condemnation, but under threat of condemnation, shall be deemed to be a taking by power of eminent domain.

12.1 **Proceeds.** All compensation, damages, and other proceeds from any such taking by power of eminent domain ("Proceeds") given for any Common Areas or Common Improvements, which shall constitute compensation for the taking of such portion of the Project, shall be made payable to the Association and shall become part of the Association Fund. Any Proceeds given for any Lot, or the Unit or Landscape Improvements located upon such Lot, shall be made payable and distributed directly to the Owner of the applicable Lot. No Proceeds shall be disbursed to either the Association or the Owner until such Proceeds have been allocated as set forth herein, either by judicial decree or by written agreement of the Owner and the Association.

12.2 **Complete Taking.** In the event that the entire Project is taken by power of eminent domain, this Declaration shall terminate as if the Declaration had terminated pursuant to Section 17.7, except that the Proceeds that would otherwise go to the Association shall be allocated among and distributed to the Owners in proportion to their respective Percentage Interest. Such distribution shall be made by checks payable jointly to the respective Owners and their respective Mortgagees, as appropriate.

12.3 **Partial Taking.** In the event that less than the entire Project is taken by power of eminent domain, the following shall occur:

12.3.1 **Allocation of Proceeds.** The Proceeds of such partial taking shall be allocated among the respective parties consistent with the provisions of this Article.

12.3.2 **Reorganization.** The Association shall not terminate, but the Association and its Members shall continue to function as follows: (a) if any partial taking of the Project results in the taking of an entire Lot, then the Owner of such Lot shall cease to be a Member of the Association and all voting rights and the Percentage Interest for each remaining Lot shall be recalculated based upon the Project; (b) if any partial taking results in the taking of a portion of a Lot and if there is not a determination that such taking makes it impractical to use the remaining portion of such Lot for any lawful purpose permitted by this Declaration, then the Vote appurtenant to such Lot shall not be adjusted; and (c) if any partial taking results in the taking of a portion of a Lot and if there is a determination that such taking makes it impractical to use the remaining portion of such Lot for any lawful purpose permitted by this Declaration, then the Lot shall no longer be included in the Total Votes of the Association and the Owner of such Lot shall cease to be a Member. The remaining portion of such Lot shall thereafter be part of the Common Area, the Association having the duty and authority to make all determinations and to take all actions necessary or appropriate to effectuate reorganization under the provisions of this section; provided, however, that if any such determination shall have been made or such action taken by judicial decree, the Association shall defer thereto and proceed in accordance therewith. The Association shall have the duty to pay the Owner of such Lot which has become part of the Common Area, an amount equal to the fair market value of such partial Lot as such value shall be determined after the taking such value shall be determined either by agreement with the Owner, or by arbitration.

12.4 **Repair and Reconstruction.** Any repair or reconstruction necessitated by condemnation shall be governed by the provisions specified in Article XII; provided, however, that the provisions of such Article dealing with the sufficiency or insufficiency of insurance proceeds shall not be applicable.

ARTICLE XIII Compliance

13.1 **Compliance.** Each Owner shall comply strictly with the provisions of this Declaration, the Articles, Bylaws and Regulations, and the decisions and resolutions of the Association adopted pursuant thereto, as any of the same may lawfully be modified and amended from time to time. Failure to comply with any of the same shall be grounds for enforcement as provided in this Article. The enumeration of remedies in this Article shall neither waive nor limit for any person or entity mentioned herein the remedies available to such person or entity. The rights and remedies set forth in this Article are cumulative and are in addition

to and not in lieu of any other right or remedy which any person or entity may have under any other instrument or agreement or at law or in equity.

13.2 Association Enforcement. The obligations, provisions, covenants, restrictions, and conditions contained in this Declaration, or in any supplemental or amended Declaration, or in the Bylaws or Regulations, with respect to any Owner or Lot, and all matters within such Owner's control, shall be enforceable by the Association by sanctions, which sanctions may include reasonable monetary fines, and suspension of the right to use the Common Improvements for a period not longer than thirty (30) days for each violation or breach. No fine may be levied against the Owner for any matter within such Owner's control except after written notice of the violation shall have been given or for any amount which shall be more than one percent of such Lot's Regular Assessment for any one violation. After notice of a violation of this Declaration, the Bylaws or Regulations, no fine may be levied or charged except such violation continues for forty-eight (48) out of the seventy-two (72) hours following the giving of the notice of violation, after which a fine may be imposed by notice of a fine; but each day a violation continues after notice of a violation is given to the Owner is a new and separate violation but no additional notice of such violation need be given. If an Owner requests in writing a hearing following a notice that a fine has been imposed, the imposition of the fine shall be suspended until after the hearing. Fines shall be payable within twenty (20) days after notice is given of imposition of a fine and shall also be a lien against said Owner's Lot and the personal liability of the Owner as provided in Article IX.

13.3 Judicial Enforcement. The obligations, provisions, covenants, restrictions and conditions contained in this Declaration, or in any supplemental or amended Declaration, or in the Bylaws or Regulations, with respect to the Association, Owner or Lot, shall be enforceable by the Declarant, the Association, or any Owner, subject to this Declaration, by a proceeding for a prohibitive or mandatory injunction. The obligations, provisions, covenants, restrictions and conditions contained in this Declaration, or in any supplemental or amended Declaration, with respect to a person or entity or property of a person or entity other than the Association or the Declarant shall be enforceable by the Declarant or by the Association or, in a proper case, by an aggrieved Owner by a proceeding for a prohibitive or mandatory injunction or by a suit or action to recover damages or to recover any amount due and unpaid. In the event any action, with or without suit, is undertaken by the Association to enforce any provision hereof or any rule of the Association, the party against whom enforcement is sought shall pay to the Association or enforcing Owner a reasonable attorney's fee.

13.4 Owner's Obligations. All obligations of an Owner under and by virtue of the provisions contained in this Declaration shall continue as long as such Owner remains an Owner as "Owner" is defined herein, notwithstanding that said Owner may be leasing, renting, or selling under contract said Owner's Lot. The Owner of a Lot shall have no obligation for expenses or other obligations accruing after said Owner conveys such Lot of record, provided, however, that such Owner shall remain liable for expenses incurred in enforcing or collecting obligations accruing prior to such conveyance.

ARTICLE XIV Mortgage Protection

14.1 Breach. No breach of any of the covenants, conditions, restrictions, or limitations contained herein shall defeat or render invalid the lien of any Mortgage made in good faith and for value; provided, however, that all such covenants, conditions, restrictions or limitations contained herein shall be binding upon an Owner whose title is derived through foreclosure, trustee's sale or by deed or assignment in lieu of foreclosure.

14.2 Notice of Noncompliance. From and after the time a Mortgagee makes written request to the Association therefore, the Association shall notify such Mortgagee in writing in the event that the Owner of the Lot encumbered by the Mortgage held by such Mortgagee neglects, for a period of thirty (30) days or more, to cure any failure on the part of such Owner to perform any of his obligations under this Declaration.

14.3 Priority of Assessment Lien. The lien or claim against a Lot for unpaid Assessments or charges levied by the Association pursuant to this Declaration shall be subordinate to a Mortgage affecting such Lot which has been recorded prior to the date such Assessment became due. A Mortgagee who comes into possession of the Lot pursuant to his Mortgage or a deed or assignment in lieu of foreclosure shall take the same free of such lien or claim for unpaid Assessments or charges, but only to the extent of Assessments or charges which accrue prior to foreclosure of the Mortgage, exercise of a power of sale available thereunder or delivery of a deed or assignment in lieu of foreclosure, except for claims for a pro rata share of such prior Assessments or charges resulting from a pro rata reallocation thereof to all Lots including the Lot in which the Mortgagee is interested. No Assessment, charge, lien, or claim which is described in the preceding sentence as being subordinate to a Mortgage or as not being a burden to a Mortgagee coming into possession pursuant to his Mortgage or a deed or assignment in lieu of foreclosure shall be collected or enforced against a Mortgagee, a successor in title to a Mortgagee, or the Lot affected or previously

affected by the Mortgage concerned (to the extent any such collection or enforcement would prejudice the interests of the Mortgagee or successor in title to the Mortgagee interested in such Lot). Nothing contained herein shall preclude the Association from pursuing collection of an unpaid Assessment from the Owner responsible for the payment of the Assessment levied against the Lot which has been foreclosed or otherwise taken over by a Mortgagee or a purchaser at a foreclosure sale; provided that such collection from said Owner shall not seek to impair title to the Lot.

14.4 Reversal Approval of Mortgages. Unless all of the first Mortgages of the individual Lots have given their prior written approval, the Association shall not be entitled, by act, omission or otherwise to:

(a) abandon or terminate the Project or to abandon or terminate the arrangement which is established by this Declaration and the Map, except for abandonment ordered by a court or provided by statute;

(b) abandon, partition, subdivide, encumber, alter the boundaries of, sell, diminish or transfer all or any part of the Common Areas (except for the granting of easements for utilities and similar purposes consistent with the intended use of the Common Areas);

(c) use hazard insurance proceeds to which it is entitled resulting from damage to any part of the Project (including the Common Areas and Common Improvements) for purposes other than repair, replacement, or reconstruction of such parts; or, in case of a balance after payment of all costs of such repair, replacement, or reconstruction, to use such balance for purposes other than as consistent with those purposes for which the Association Fund may be used;

(d) change the vote applicable to each respective Lot or obligations of any Unit which apply for purposes of levying Regular or Special Assessments or charges.

(e) subject any Lot to any unreasonable restraints on alienation not specifically provided for in this Declaration, which would adversely affect title or marketability of a Lot, or the ability of the Mortgagee to foreclose its Mortgage lien and thereafter to sell or lease the mortgaged Lot; or

(f) allow any person handling funds of the Association, including without limitation employees of any professional Manager, to do so without first obtaining therefore appropriate fidelity bond coverage.

14.5 Financial Information. Any Mortgagee shall have the right, at its request and expense and upon reasonable notice, to examine the books and records of the Association during reasonable business hours. From and after the time a Mortgagee makes written request to the Association therefore and at the expense of such Mortgagee, the Association shall furnish to such Mortgagee copies of such annual operating reports and other reports or writings summarizing or reflecting the financial position or history of the Association as may be prepared for distribution to or use by the Owners generally.

14.6 Notification of Loss or Damage. From and after the time a Mortgagee makes written request to the Association therefor, the Association shall notify such Mortgagee in writing in the event that there occurs any damage or loss to, or taking or anticipated condemnation of the Common Areas or Common Improvements involving an amount in excess of, or reasonably estimated to be in excess of Ten Thousand Dollars (\$10,000.00). Said notice shall be given within ten (10) days after the Association learns of such damage, loss taking or anticipated condemnation.

14.7 Article Supersedes All Others. In the event another provision or clause of this Declaration deals with the same subject matter as is dealt with in any provision or clause of this Article, the provision or clause which results in the greatest protection and security for a Mortgagee shall control the rights, obligations, or limits of authority, as the case may be, applicable to the Association with respect to the subject concerned.

14.8 Amendment of this Article. No amendment to this Article which has the effect of diminishing the rights, protection, or security afforded to Mortgagees shall be accomplished or effective unless all of the first Mortgages of the individual Lots have given their prior written approval to such amendments. Any amendment to this Article shall be accomplished by an instrument executed by the Association and filed for record in the office of the County Recorder of Davis County, State of Utah. In any such instrument, an officer of the Association shall certify under penalties of perjury that any prior written approval of first Mortgages required by this Article as a condition to amendment has been obtained.

14.9 Notices to Mortgagee. Any notice to a Mortgagee under this Article shall be in writing and shall be sufficient for all purposes if personally delivered or if sent by first class mail, postage prepaid, and addressed to the Mortgagee at the address

for notices from time to time specified by the Mortgagee in writing to the Association. Any such notice shall be deemed to have been given and received and shall be effective when personally delivered or when deposited in the U.S. mail in the form herein specified, whichever first occurs.

ARTICLE XV
General Provisions

15.1 **General Interpretation.** The provisions of this Declaration, and any supplemental or amended Declaration, shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of a planned unit development. Failure to enforce any provision, restriction, covenant or condition contained in this Declaration, or in any supplement or amendment to this Declaration, shall not operate as a waiver of any such provision, restriction, covenant or condition or of any other provisions, restrictions, covenants or conditions.

15.2 **Rules of Construction.** This Declaration shall be governed by and construed in accordance with the laws of the State of Utah. The provisions hereof shall be in addition and supplemental all other provisions of applicable law. Except for judicial construction, the Board of Trustees shall have the exclusive right to construe and interpret the provisions of this Declaration, the Articles, Bylaws and Regulations. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Board's construction or interpretation of the provisions hereof, or of the Articles, Bylaws or Regulations, shall be final, conclusive and binding as to all persons and property benefitted or bound by this Declaration and provisions hereof. No term within this Declaration is defined with reference to the Utah Condominium Ownership Act (terms herein are not intended to be defined by such Act), and any usage of terms in this Declaration which is similar to the usage of terms present in the Condominium Ownership Act is purely coincidental. Whenever used herein, unless the context shall otherwise require, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, any gender shall include both other genders, and the term "person" shall include any individual, partnership, limited liability company, corporation, trust, or other association or entity or combination thereof. Any use of the terms guests, tenants, licensees or invitees shall be deemed to include persons related or unrelated to an Owner who reside in the Unit or who are present on the Project and the guests, tenants, licensees and invitees of such persons. The article and section headings set forth herein are for convenience and reference only and are not intended to expand, limit or otherwise affect the meaning or interpretation of this Declaration or any provision hereof. The provisions hereof shall be deemed to be independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision hereof. All exhibits attached hereto are by this reference incorporated herein and made a part hereof.

15.3 **Notices.** Each Owner shall register from time to time with the Association its current mailing address. Unless otherwise provided in this Declaration and then only to the extent so provided, all notices, demands and other communications to any Owner as provided for in this Declaration shall be in writing and shall be sufficient for all purposes if personally delivered or if sent by first class U.S. mail, postage prepaid, addressed to the Owner or at its registered mailing address or, if no address has been registered for an Owner, to the Unit on the Lot owned by such Owner. All notices, demands and other communications to the Association or Board as provided for in this Declaration shall be in writing and shall be sufficient for all purposes if personally delivered or if sent by first class U.S. mail, postage prepaid, addressed to the Association at its offices or to such other address as the Association may hereafter designate by notice to the Owners as herein provided. All notices, demands and other communications to the Declarant as provided for in this Declaration shall be in writing and shall be sufficient for all purposes if personally delivered or if sent by first class U.S. mail, postage prepaid, addressed to Eaglewood Development, L.L.C., 585 West West 500 South, Suite 110, Bountiful, Utah 84010, or to such other address as the Declarant may hereafter designate by notice to the Owners as herein provided. Any notice, demand or communication referred to in this Declaration shall be deemed to have been given and received when personally delivered or when deposited in the U.S. mail, postage prepaid, and in the form provided for in this section, whichever first occurs.

15.4 **Assignment of Declarant's Rights.** Any and all rights and powers of Declarant herein may be delegated, transferred or assigned.

15.5 **Audit.** The Association, at the expense of the Association Fund, shall obtain an audit, by certified public accountants, of all books and records pertaining to the Association at no greater than annual intervals, and copies thereof shall be furnished to the Owners. Any Owner may at any reasonable time, upon appointment and at his own expense, cause an audit or inspection to be made of the books and records maintained by the Association.

15.6 **Amendment.** Except as otherwise provided herein, this Declaration may be amended if Owners holding at least sixty-seven percent (67%) of the Total Votes of the Association consent and agree to such amendment by a vote of the Members

duly called for such purpose, and evidenced and certified by instruments which are duly recorded in the office of the County Recorder of Davis County, State of Utah. Such Amendment shall be signed by the Association and the certification contained in such Amendment that the Amendment has been approved in accordance with the procedures contained herein shall be sufficient to permit reliance by any party upon the terms and conditions of such Amendment and no further inquiry as to the validity of such Amendment shall be required of any party.

15.7 Term; Termination. This Declaration shall be effective upon the date of recordation hereof and, as amended from time to time, shall continue in full force and effect for a term of thirty (30) years from the date of recordation. From and after said date thirty (30) years from the date of recordation, this Declaration, as amended, shall be automatically extended for successive periods of ten (10) years each, unless there is an affirmative vote to terminate this Declaration by the then Owners casting sixty-seven percent (67%) of the Total Votes cast at an election held for such purpose within six (6) months prior to the expiration of the initial effective period hereof or any ten (10) year extension. The Declaration may be terminated at any time if at least ninety percent (90%) of the votes cast by all Owners shall be cast in favor of termination at an election held for such purpose. No vote to terminate this Declaration shall be effective unless and until written consents to such termination have been obtained, within a period from six (6) months prior to such vote to six (6) months after such vote, from the holders of recorded first mortgages or deeds of trust on seventy-five percent (75%) of the Lots upon which there are such recorded first mortgages and deeds of trust.

15.7.1 Conditions Precedent to Termination. Notwithstanding that the affirmative vote of Owners shall have been obtained in accordance with the provisions of Section 15.7, no termination of the Declaration shall occur unless and until such time as (i) the Roads and any and all storm drainage systems and other similar systems located within the Project shall have been dedicated to and accepted by the City of North Salt Lake or its successor and responsibility for the maintenance of same shall have been assumed by said city, (ii) any and all utility services provided to the Lots shall be owned and maintained by a party other than the Association, (iii) each and every Lot shall be able to independently maintain irrigation, sprinkler and other systems necessary for the maintenance of the Landscape Improvements applicable to such Lot, and (iv) each Lot shall have direct access for ingress and egress to a dedicated public street.

15.7.2 Notice of Termination. If the necessary votes and consents are obtained, the Board of Trustees shall cause to be recorded in the Davis County records a "Certificate of Termination," duly signed by a member of the Board and acknowledged before a Notary Public. Thereupon the covenants herein contained shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

15.7.3 Ownership Upon Termination. Upon dissolution of the Association and unless some other method of ownership is provided for the Common Areas, Common Improvements, and Landscape Improvements; the Common Areas and Common Improvements, and any other property, lien interests, or claims previously held by the Association, except the Landscape Improvements, shall be owned by all of Owners in common, in interests equal to their respective Percentage Interest, and be subject to an action in partition by any Owner; and (ii) Landscape Improvements on each Lot shall be deemed owned by the Owner of the respective Lot on which such Landscape Improvements are located.

15.8 Rule Against Perpetuities. Each provision contained in this Declaration which is subject to the laws or rules sometimes referred to as the rule against perpetuities or the rule prohibiting unreasonable restraints of alienation shall continue and remain in full force and effect for the period of 21 years following the death of the last survivor of the issue of Elizabeth II, Queen of England, and the now living children of said issue, or until this Declaration is terminated as herein provided, whichever first occurs. All other provisions contained in this Declaration shall continue and remain in full force and effect.

15.9 Effective Date. This Declaration shall take effect upon recording in the Office of the County Recorder of Davis County, State of Utah.

15.10 Agent for Service. The name and address of the person to receive service of process shall be the registered agent and address of the Association as shown on the official corporate records maintained in the office of the Department of Commerce, Corporations Division, State of Utah. On the date of this Declaration, the registered agent of the Association is W. Scott Kjar, and the registered address is c/o The Aerie at Eaglewood Project Homeowners Association, 585 West West 500 South, Suite 110, Bountiful, Utah 84010.

15.11 Limitation on Association's Liability. The Association shall not be liable for any failure of water service or other utility service (if any) to be obtained and paid for by the Association hereunder, or for injury or damage to any person or property caused by the elements or by another Owner or person in or upon the Project, or resulting from the failure of any of the

Common Areas, Common Improvements or Landscape Improvements. No diminution or abatement of any Assessments under this Declaration shall be claimed or allowed for inconvenience or discomfort arising from the making of any repairs or improvements to or maintaining such part of the Project or any part thereof, or from any action taken to comply with the provisions of this Declaration or with the laws, ordinances, regulations, rules or orders of any governmental authority.

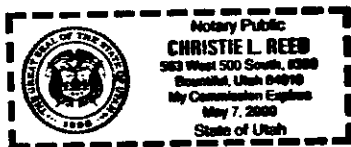
EAGLEWOOD DEVELOPMENT, L.L.C.,
a Utah limited liability company

Steven E. Smoot

Steven E. Smoot, Manager

STATE OF UTAH)
 : ss.
COUNTY OF DAVIS)

On this 5th day of November, 1998, before me a Notary Public, personally appeared Steven E. Smoot, known to me to be the Manager of Eaglewood Development, L.L.C., a Utah limited liability company, who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that said corporation executed the same.



Christie L. Reed

NOTARY PUBLIC
My Commission Expires: *May 7, 2000*
Residing in: *Bountiful, Utah*

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