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**ENABLING DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF**

**RESIDENCES AT HOLMES CREEK
PHASES 1, 2, 3, 4, & 5
A PRUD SUBDIVISION**

THIS ENABLING DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS is made and executed this 21 day of January, 2000, by **ROSEWOOD
TOWNHOUSE, L.L.C.**, hereinafter referred to as "Declarant,"

W I T N E S S E T H :

WHEREAS, Declarant is the owner of that certain parcel of real property situated in Davis
County, State of Utah, and more particularly described in **ARTICLE II** herein.

NOW THEREFORE, Declarant hereby declares that all of the properties described above
shall be held, sold and conveyed subject to the following easements, restrictions, covenants and
conditions which are for the purpose of protecting the value and desirability of, and which shall run
with, the real property and be binding on all parties having any right, title or interest in the
described properties or any part thereof, their heirs, successors and assigns, and shall inure to the
benefit of each owner thereof.

11-466-0001 thru 0011
11-467-0011 thru 0015
11-468-0015 thru 0019
11-469-0019 thru 0024
11-470-0024 thru 0029

ARTICLE I

DEFINITIONS

When used in this Declaration, the following terms shall have the meaning indicated:

Section 1.1. "Association" shall mean and refer to RESIDENCES AT HOLMES
CREEK, A PRUD SUBDIVISION, its successors and assigns.

Section 1.2. "Declarant" shall mean and refer to ROSEWOOD TOWNHOUSE, L.L.C., and its successors and assigns if such successors or assigns should acquire more than are undeveloped lot from the Declarant for the purpose of development.

Section 1.3. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 1.4. "Declaration" shall mean and refer to this Enabling Declaration of Covenants, Conditions and Restrictions of RESIDENCES AT HOLMES CREEK, A PRUD SUBDIVISION, and all amendments hereto.

Section 1.5. "Lot" shall mean and refer to each individual lot within the RESIDENCES AT HOLMES CREEK, A PRUD SUBDIVISION , PHASES 1, 2, 3, 4 and 5, as shown on the plat maps of the recorded subdivisions of the properties, with the exception of the common areas and limited common areas.

Section 1.6. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 1.7. "Management Committee and Committee" shall mean and refer to the Board of Trustees of the Association, or a management committee specifically designated as such by the Board of Trustees of the Association. The Committee shall have and exercise the rights, powers and responsibilities designated and delegated in this Declaration and in the Articles of Incorporation, the by-Laws and rules and regulations of the Association.

Section 1.8. "Common Area" shall mean and refer to all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the owner. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows:

ALL OF THE AREA DESIGNATED AS COMMON AREA ON THE RECORDED PLAT OF RESIDENCES AT HOLMES CREEK, A PRUD SUBDIVISION PHASES 1, 2, 3, 4 and 5.

Section 1.9. "Manager" shall mean and refer to the person or entity designated by the Association to manage the Project.

Section 1.10. "Plat" shall mean and refer to the official subdivision plats of RESIDENCES AT HOLMES CREEK, A PRUD SUBDIVISION PHASES 1, 2, 3, 4, and 5 filed and recorded in the Official Records of the Davis County Recorder, consisting of 28 individual lots.

Section 1.11. "Limited common areas and facilities" shall mean or refer to those common areas and facilities designated on the recorded subdivision plats as reserved for the use and benefit of each lot to the exclusion of other lot owners. The driveways and other areas designated on the subdivision plat are deemed limited common areas.

Section 1.12. "Mortgage" shall mean and refer to the Deed of Trust as well as a mortgage.

Section 1.13. "Mortgage" shall mean and refer to the beneficiary or holder under Deed of Trust as well as a mortgage.

Section 1.14. "Person" shall mean and refer to any legal entity as well as natural person.

Section 1.15. "Project" shall mean and refer to the RESIDENCES AT HOLMES

CREEK, A PRUD SUBDIVISION, PHASES 1, 2, 3, 4 and 5, consisting of 28 individual lots.

ARTICLE II

GRANT AND SUBMISSION

Declarant hereby submits to the provisions of this Declaration, and to the covenants, conditions, restrictions, reservations, assessment charges and liens hereunder, that certain real property (the "Subject Property") situated in Davis County, Utah, and more fully described as follows:

RESIDENCE AT HOLMES CREEK A PRUD SUBDIVISION

PHASE 1

COMMENCING AT A POINT LOCATED SOUTH 89°30'20" EAST ALONG THE SECTION LINE 1438 098 FEET AND SOUTH 653.065 FEET FROM THE NORTHWEST CORNER OF SECTION 27, TOWNSHIP 4 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; THENCE SOUTH 42°58'17" WEST ALONG THE SOUTH BOUNDARY OF ROSEWOOD LANE 231.358 FEET; THENCE ALONG SAID SOUTH BOUNDARY AND ALONG THE ARC AT A 223.82 FOOT RADIUS CURVE TO THE RIGHT 83 83 FEET (SAID CHORD BEARING AND DISTANCE BEING SOUTH 53°42'04" WEST 83.341 FEET); THENCE SOUTH 64°25'52" WEST ALONG SAID SOUTH BOUNDARY 7.60 FEET, THENCE NORTH 21°35'00" WEST 30.07 FEET; THENCE ALONG THE CENTER LINE OF ROSEWOOD LANE AS FOLLOWS: NORTH 64° 25'52" EAST 5 51 FEET; ALONG THE ARC OF A 193.82 FOOT RADIUS CURVE TO THE LEFT 72 594 FEET (CHORD BEARING AND DISTANCE BEING NORTH 53°42'04" EAST 72.17 FEET); NORTH 42°58'17" EAST 269.98 FEET; ALONG THE ARC OF A 191.97 FOOT RADIUS CURVE TO THE RIGHT 98.809 FEET (CHORD BEARING AND DISTANCE BEING NORTH 57°43' 00" EAST 97 722 FEET); NORTH 72°27'44" EAST 70.79 FEET; THENCE SOUTH 22° 02'32" EAST 30.09 FEET; THENCE SOUTH 72°27'44" WEST 5.36 FEET; THENCE SOUTH 21°42'56" EAST ALONG THE WEST BOUNDARY OF FAIRFIELD ROAD 240.06 FEET; THENCE SOUTH 47°22'34" WEST ALONG THE PHYSICAL BOUNDARY OF FIDDLER'S CREEK SUBDIVISION, NO. 2, 372.32 FEET; THENCE NORTH 45°03'42" WEST 11.00 FEET; THENCE NORTH 45° 00'57" EAST 27.83 FEET; THENCE NORTH 43°52'19" EAST 122.84 FEET; THENCE NORTH 58°56'25" WEST 31.655 FEET, THENCE NORTH 7°45'52" EAST 15 62 FEET; THENCE NORTH 11°12'20" EAST 161.508 FEET; THENCE NORTH 46° 01'20" WEST 109.72 FEET TO THE POINT OF BEGINNING.

PHASE 2

COMMENCING AT A POINT LOCATED SOUTH 89°30'20" EAST ALONG THE SECTION LINE 1208.476 FEET AND SOUTH 882.287 FEET FROM THE NORTHWEST CORNER OF

SECTION 27, TOWNSHIP 4 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; THENCE NORTH $21^{\circ}34'57''$ WEST TO THE SOUTH BOUNDARY OF ROSEWOOD LANE 5 74 FEET; THENCE NORTH $64^{\circ}25'52''$ EAST ALONG THE SAID SOUTH BOUNDARY OF ROSEWOOD LANE 3.176 FEET; THENCE SOUTH $36^{\circ}35'17''$ EAST 52.06 FEET; THENCE SOUTH $43^{\circ}50'08''$ EAST 48.81 FEET; THENCE NORTH $47^{\circ}14'50''$ EAST 121.78 FEET; THENCE SOUTH $46^{\circ}08'18''$ EAST 53.24 FEET; THENCE SOUTH $43^{\circ}48'23''$ WEST 47.90 FEET; THENCE SOUTH $45^{\circ}11'37''$ EAST 61.95 FEET; THENCE NORTH $43^{\circ}58'19''$ EAST 107.735 FEET; THENCE SOUTH $58^{\circ}56'25''$ EAST ALONG RESIDENCES AT HOLMES CREEK NO. 1st 27.07 FEET; THENCE ALONG RESIDENCES AT HOLMES CREEK NO. 1st AS FOLLOWS: SOUTH $43^{\circ}52'19''$ WEST 122.84 FEET; SOUTH $45^{\circ}00'57''$ WEST 27.83 FEET; SOUTH $45^{\circ}03'42''$ EAST 11.00 FEET; THENCE SOUTH $47^{\circ}22'34''$ WEST ALONG FIDDLER'S CREEK SUBDIVISION, NO. 2, PHYSICAL BOUNDARY 143.23 FEET; THENCE NORTH $21^{\circ}35'00''$ WEST 271.193 FEET TO THE POINT OF BEGINNING. * - A PLUD SUBDIVISION of

PHASE 3

COMMENCING AT A POINT LOCATED SOUTH $89^{\circ}30'20''$ EAST ALONG THE SECTION LINE 1381.32 FEET AND SOUTH 802.16 FEET FROM THE NORTHWEST CORNER OF SECTION 27, TOWNSHIP 4 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; THENCE SOUTH $80^{\circ}46'59''$ EAST 60.028 FEET, THENCE SOUTH $9^{\circ}13'01''$ WEST 36.596 FEET; THENCE SOUTH $80^{\circ}46'59''$ EAST 34.77 FEET; THENCE SOUTH $7^{\circ}02'17''$ WEST 30.557 FEET; THENCE SOUTH $77^{\circ}53'21''$ EAST TO THE BOUNDARY OF RESIDENCES AT HOLMES CREEK, NO. 1st 20.836 FEET; THENCE SOUTH $7^{\circ}45'52''$ WEST ALONG SAID SUBDIVISION 15.62 FEET; SOUTH $58^{\circ}56'25''$ EAST 4.58 FEET; THENCE SOUTH $43^{\circ}58'19''$ WEST ALONG THE BOUNDARY OF RESIDENCES [AT] HOLMES CREEK NO. 2 107.735 FEET; THENCE CONTINUING ALONG ~~OTC NO 2 NORTH 45°~~ North 45° 11.37" WEST 61.95 FEET; NORTH $43^{\circ}48'23''$ EAST 47.90 FEET; NORTH $46^{\circ}08'18''$ WEST 53.24 FEET; THENCE NORTH $15^{\circ}03'43''$ EAST 68.618 FEET TO THE POINT OF BEGINNING. * A PLUD SUBDIVISION of
④ RESIDENCES AT HOLMES CREEK, PHASE 4
No. 2 A PLUD SUBDIVISION of

COMMENCING AT A POINT LOCATED SOUTH $89^{\circ}30'20''$ EAST ALONG THE SECTION LINE 1381.32 FEET AND SOUTH 802.16 FEET FROM THE NORTHWEST CORNER OF SECTION 27, TOWNSHIP 4 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; THENCE NORTH $20^{\circ}24'29''$ EAST 37.28 FEET; THENCE NORTH $44^{\circ}39'09''$ EAST 31.94 FEET; THENCE NORTH $28^{\circ}24'21''$ EAST 31.40 FEET, THENCE NORTH $46^{\circ}01'20''$ WEST TO THE SOUTH BOUNDARY OF ROSEWOOD LANE 38.50 FEET; THENCE NORTH $42^{\circ}58'17''$ EAST ALONG SAID SOUTH BOUNDARY 50.007 FEET; THENCE SOUTH $46^{\circ}01'20''$ EAST ALONG THE BOUNDARY OF RESIDENCES AT HOLMES CREEK NO. 1st 109.72 FEET, THENCE SOUTH $11^{\circ}12'20''$ WEST ALONG SAID HOLMES CREEK NO. 1st 161.508 FEET; THENCE ALONG RESIDENCES AT HOLMES CREEK NO. 3rd AS FOLLOWS: NORTH $77^{\circ}53'21''$ WEST 20.836 FEET; NORTH $7^{\circ}02'17''$ EAST 30.557 FEET; THENCE NORTH $80^{\circ}46'59''$ WEST 34.77 FEET; NORTH $9^{\circ}13'01''$ EAST 36.596 FEET, NORTH $80^{\circ}46'59''$ WEST 60.028 FEET TO THE POINT OF BEGINNING.

* A PLUD SUBDIVISION of

PHASE 5

COMMENCING AT A POINT LOCATED SOUTH $89^{\circ}30'20''$ EAST ALONG THE SECTION

LINE 1381.32 FEET AND SOUTH 802.16 FEET FROM THE NORTHWEST CORNER OF SECTION 27, TOWNSHIP 4 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, THENCE ALONG RESIDENCES AT HOLMES CREEK NO. 4^{AS} FOLLOWS. NORTH 20°24'29" EAST 37.28 FEET; NORTH 44°39'09" EAST 31.94 FEET; NORTH 28°24'21" EAST 31.40 FEET; NORTH 46°01'20" WEST ~~TO~~ THE SOUTH BOUNDARY OF ROSEWOOD LANE 38.50 FEET; THENCE ALONG SAID LANE AS FOLLOWS: SOUTH 42°58'17":WEST 181.34 FEET; ALONG THE ARC OF A 223.82 FEET RADIUS CURVE TO THE RIGHT 83.83 FEET (CHORD BEARING AND DISTANCE BEING SOUTH 53°42'04" WEST 83.341 FEET; SOUTH 64°25'52" WEST 4.424 FEET, THENCE ALONG RESIDENCES AT HOLMES CREEK, NO. 2^{AS} FOLLOWS: SOUTH 36°35'17" EAST 52.06 FEET, SOUTH 43°50'08" EAST 48.81 FEET; NORTH 47°14'50" EAST 121.78 FEET; THENCE NORTH 15°03'43" EAST 68.618 FEET TO THE POINT OF BEGINNING.

* A PRUD SUBDIVISION *of*
ARTICLE III

PROPERTY RIGHTS

Section 3.1. Owners' Easements of Enjoyment. Every owner of a lot in the phases at RESIDENCES AT HOLMES CREEK A PRUD SUBDIVISION, shall have a right and easement of enjoyment in and to the Common Area in all phases which should be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;
- (b) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;
- (c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer is signed by two-

thirds (2/3) of each class of members has been recorded.

Section 3.2. Delegation of Use. Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants or contract purchasers who reside on the property.

ARTICLE IV

COVENANTS, CONDITIONS AND RESTRICTIONS

The foregoing submission is made upon and under the following covenants, conditions and restrictions:

Section 4.1. Name. The Project, as submitted to the provisions of this Declaration, shall be known as RESIDENCES AT HOLMES CREEK, A PRUD SUBDIVISION which consists of five plats, Nos. 1, 2, 3, 4, and 5.

Section 4.2. Description of Lots. The Project consists of individual lots, each of which will include the improvements authorized on the Map and/or by the City of Layton, Utah. All improvements shall be constructed in a style and of materials architecturally compatible with the other improvements on the Project. The lots, their locations, and approximate dimensions, are indicated on the respective Plats. RESIDENCES AT HOLMES CREEK, A PRUD SUBDIVISION, is being developed in five (5) phases, each phase to be developed individually. There are ten (10) lots in RESIDENCES AT HOLMES CREEK NO. 1, A PRUD SUBDIVISION, four (4) lots in RESIDENCES AT HOLMES CREEK NO. 2, A PRUD SUBDIVISION, four (4) lots in RESIDENCES AT HOLMES CREEK NO. 3, A PRUD SUBDIVISION, five (5) lots in RESIDENCES AT HOLMES CREEK NO. 4, A PRUD SUBDIVISION, and five (5) lots in RESIDENCES AT HOLMES CREEK NO. 5, A PRUD SUBDIVISION. Declarant shall develop

all phases simultaneously. However, each phase is designed to stand on its own. If all phases are not developed, those phases developed and completed shall constitute the lots subject to the Enabling Declaration of Covenants, Conditions, and Restrictions.

Section 4.3. Common Areas and Facilities. The common areas and facilities of the Project shall be and are the roads, grass and lawn areas, clubhouse facilities, specifically designated recreational vehicle and public parking areas, if any, and any and all other common areas and facilities designated as such on the Plat, and any other future interests in common areas pursuant to the terms of this Declaration. A lot owner in each phase of Development shall be entitled to use the common areas of all five phases of Development.

Section 4.4. Lots and Rights to Common Areas and Facilities Inseparable. The percentage of undivided interest in the common areas and facilities shall not be separated from the lot to which it appertains and, even though not specifically mentioned in the instrument of transfer or conveyance, such percentage of undivided interest and such right of exclusive use shall automatically accompany the transfer and conveyance of the lot to which they relate.

Section 4.5 Voting-Common Expense-Ownership in Common Areas and Facilities. The percentage of undivided ownership in the common areas and facilities is set forth in the attached Exhibit A, and shall be used for all purposes including, but not limited to, voting and sharing of the common expenses in the proportionate amount equal to the percentage of undivided ownership therein. The Association shall be the record owner of all common areas and facilities.

Section 4.6 . Easements and Encroachments. If any portion of the common areas and facilities or any fences or walls adjacent to a lot boundary in the Project are partially or totally destroyed, and then rebuilt or improved, maintained, painted, or repaired, encroachments shall be

permitted as may be necessary, desirable or convenient upon the lots, and easements for such encroachments and for the maintenance of the same shall exist for such period of time as may be necessary, desirable or convenient. In addition, encroachments shall be permitted to the Association or its designate upon the lots and the common facilities as may be necessary, convenient or desirable within the Project for the installation, placing, removal, inspection and maintenance of utility lines and utility service facilities, for regular repairs and maintenance of exterior portions of improvement on the lots, for any emergency or necessary repairs, and for lawn, trees, shrubbery and yard care and maintenance. Easements for such encroachments shall exist for such period of time as may be necessary, convenient or desirable.

ARTICLE V

MEMBERSHIP AND VOTING RIGHTS

Section 5.1. Members. Every owner of a lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject assessment.

Section 5.2. Voting Rights. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any one Lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to

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

- (a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or
- (b) on January 1, 2005.

ARTICLE VI

GOVERNING BODIES

Section 6.1. Owners Association. The administration of the Project shall be governed by this Declaration and the Articles of Incorporation and the By-Laws of RESIDENCES AT HOLMES CREEK, a Utah Non-Profit Corporation. An owner of a Lot shall automatically become a member of the Association and shall remain a member for the period of his ownership.

Section 6.2. Association Management. The Association shall conduct the general management, operation and maintenance of the Project and of the common areas and facilities and the enforcement of the provisions of this Declaration, the Articles of Incorporation and By-Laws of the Association, and rules and regulations adopted thereunder.

ARTICLE VII

LIMITATION OF USE OF LOTS AND COMMON AREAS

Section 7.1. Purposes. Every lot within the Project shall be used for single family residential living purposes. No lots within the Project shall be occupied or used for commercial or business purposes; provided, however, that nothing in this paragraph shall be deemed to prevent

- (a) Declarant or its duly authorized agent from using any lot owned by Declarant as a sales office,

Section 7.2. No Obligations. Except for portions of the Project expressly designated on the map, there shall be no obstructions of the common areas, and nothing shall be stored in the common areas without the prior consent of the Management Committee.

Section 7.3. Alterations, Additions and Attachments. No building, fence, wall or other structure, satellite dish or receiver, or outside antenna shall be commenced, erected, altered, placed or permitted to exist on any portion of the Project, without the prior written approval of the Management Committee. In the event any of the improvements or alterations set forth in the preceding sentence requires Layton City approval the homeowner shall, in addition to approval of the Management Committee, obtain approval from Layton City. All buildings, alterations, improvements, additions and maintenance on the Subject Property shall be made in a workmanlike manner and shall be architecturally compatible with the rest of the Project.

Section 7.4. No Offensive Activity. No noxious or offensive activity shall be carried on in any lot or in the common areas, nor shall anything be done therein which may be or become an annoyance or nuisance to the other owners.

Section 7.5. Construction in Common Areas and Lots. Nothing shall be altered or constructed in or removed from the common areas or Lots, except upon the written consent of the Management Committee. In the event any construction or alteration or removal from the common areas or lot require approval of Layton City, the owner shall first obtain any and all required approvals from Layton City.

Section 7.6. Rules. The Management Committee is authorized to adopt rules for the use of the common areas and Lots, which rules shall be in writing and furnished to the owners.

Section 7.7. Dumping of Garbage. Except in areas designated on the map or by the Management Committee, no lot or portion of the common areas shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste, nor shall any rubbish, trash, papers, junk or debris be burned within the Project. All trash, rubbish, garbage or other waste within the boundaries of the Project shall be kept only in sanitary containers. Each lot shall be kept free of trash and refuse by the owner of such lot. No person shall allow any unsightly unsafe or dangerous conditions to exist on or in any lot.

Section 7.8. Parking of Vehicles. No vehicles shall be parked overnight on any of the streets or roadways in the Project or on any common areas of the Project, nor on any lot outside of any enclosed garage, except such vehicles, and upon such portions of the Project, specifically designated for this purpose on the Map or by the Management Committee. In addition, no boats, campers, trailers, large trucks, motor homes, or similar large items shall be parked or stored on any lot, or in the common areas, except in accordance with rules and regulations adopted by the Management Committee. In the event there are areas designated as "No Parking" the Management Committee shall strictly enforce the requirement for the purpose of keeping those areas clear.

ARTICLE VIII

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 8.1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the properties, hereby covenants, and each Owner of any Lot (in each respective phase) by acceptance of a deed therefore, whether or not it shall be expressed in such deed, is deemed to covenant and agree to pay to the Association: (a) annual assessments for owners respective prorated share of the real property taxes for the common areas, and (b) special

assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. A copy of the initial projected annual and monthly assessment is attached as "Exhibit A" and incorporated by reference herein.

Section 8.2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area.

Section 8.3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be \$840 per lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than ten percent (10%) above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above ten percent (10%) by a vote of two-thirds (2/3) of each class of members who are voting in

person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Trustees may fix the annual assessment at an amount not in excess of the maximum.

Section 8.4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 8.5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4.

Written notice of any meeting called for the purpose of taking any action authorized herein shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half ($\frac{1}{2}$) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 8.6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 8.7. Date of Commencement of Annual Assessments, Due Dates. The

annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Trustees shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Trustees. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

Section 8.8. Effect of Nonpayment of Assessments; Remedies of the Association.

Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of six percent (6%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for assessments provided for herein by non-use of the Common Area by abandonment of his Lot.

Section 8.9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage, the sale or transfer of any Lot, and shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessment thereafter becoming due or from the lien

ARTICLE IX

INSURANCE

Section 9.1. Obtaining of Insurance Policies. The Management Committee shall obtain and maintain, at all times, a policy or policies insuring the Management Committee, the Lot owners and the Manager against any liability to the public or to the Owners of Lots and common areas, and their invitees or tenants, incident to the ownership and/or use of the common areas of the project, issued by such insurance companies and with such limits of liability as determined by the Management Committee. Each such policy or policies shall be issued on the comprehensive liability basis and shall provide cross-liability endorsement wherein the rights of named insured under the policy or policies shall not be prejudiced as in respect to his, her or their action against another named insured.

Section 9.2. Insurance. The Association shall maintain in full force and effect a policy or policies of fire insurance with extended coverage, vandalism and malicious mischief endorsements, for the full insurable replacement value of the common areas and facilities. Such policy or policies shall be written in the name of, and the proceeds thereof shall be payable to, the Association. Such policy or policies shall not be canceled except after thirty (30) days' written notice to the Association.

Section 9.3. Other Insurance. In addition, the Management Committee may obtain insurance for such other risks of a similar or dissimilar nature as are or shall hereafter customarily be covered with respect to common areas or other Projects similar in construction, design and use.

ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Trustees of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board or its designated committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. In the event any improvement set forth in the previous sentence requires Layton City approval, the owner shall not commence construction or alteration or improvement until Layton City has granted approval.

ARTICLE XI**MORTGAGE PROTECTION**

Notwithstanding all other provisions herein to the contrary, the following provisions are in effect:

Section 11.1. Rights of First Refusal. Any "right of first refusal" which may be granted herein shall not impair the rights of the first Mortgagee of a Lot to:

- (a) Foreclose or take title to a lot pursuant to the remedies provided in the

Mortgage; or

- (b) Accept a deed (or assignment) in lieu of foreclosure in the event of default by a Mortgagor; or
- (c) To sell or lease a Lot acquired by a Mortgagee.

Section 11.2. Title in Mortgagee. Any first Mortgagee who obtains title to a Lot pursuant to the remedies provided in the Mortgage or foreclosure of the Mortgage will not be liable for such Lot's unpaid dues or charges which accrue prior to the acquisition of title of such Lot by the Mortgagee.

Section 11.3. Notice of Default by Individual Lot Owner. A first Mortgagee of a Lot, upon request, shall be entitled to written notification from the Association of any default in the performance by the individual Lot owner of any obligation under this Declaration, or other documents of this PRUD, which is not cured within sixty (60) days.

Section 11.4. No Priority. No provision herein is intended, nor shall it be construed, to give any lot owner, or any other party, priority over any rights of the first Mortgagee of a Lot pursuant to its Mortgage in the case of a distribution to such Lot owner of insurance proceeds or condemnation awards for losses to or a taking of common areas and facilities.

ARTICLE XII

GENERAL PROVISIONS

Section 12.1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no

Section 12.2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 12.3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty-(20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded.

Section 12.4. Annexation. Additional residential property and Common Area may be annexed to the Properties with the consent of two-thirds (2/3) of each class of members.

Section 12.5. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration:

- (a) Annexation of additional properties;
- (b) Dedication of Common Area; and
- (c) Amendment of this Declaration of Covenants, Conditions and Restrictions.

ARTICLE XIII

MISCELLANEOUS PROVISIONS

Section 13.1. Interpretation. The provisions of this Declaration shall be liberally

construed to effectuate its purpose of creating a uniform plan for the development and operation of a PRUD. Failure to enforce any provision hereof shall not constitute a waiver of the rights to enforce said provision or any other provision hereof.

Section 13.2. Counterparts. This Declaration may be executed simultaneously in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 13.3. Governing Law and Jurisdiction. Interpretation and enforcement of this Declaration shall be according to the laws of Utah. Jurisdiction and venue of any dispute hereunder shall be in Davis County, Utah, or United States District Court for Utah.

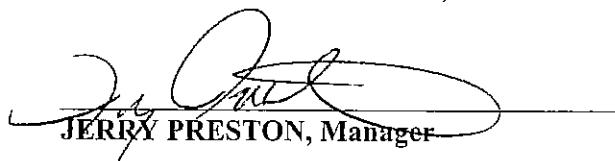
Section 13.4. Default. If any party governed by the terms of this Declaration defaults under any provision hereof, that defaulting party shall pay all costs and attorneys' fees incurred by any other party to enforce the provisions hereof, whether incurred through formal lawsuit or otherwise.

Section 13.5. Effective Date. This Declaration shall take effect upon recording.

Section 13.6. Paragraphs, Numbers and Headings. Headings and paragraph numbers have been inserted herein solely for convenience and reference and shall not be construed to affect the meanings, construction or effect hereof.

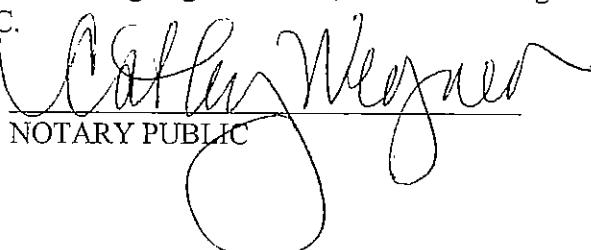
IN WITNESS WHEREOF, the undersigned, being the declarant herein, has hereunto set its hand and seal the day and year first above written.

ROSEWOOD TOWNHOUSE, L.L.C.

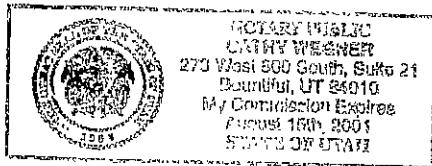

JERRY PRESTON, Manager

STATE OF UTAH :
 : ss :
 COUNTY OF DAVIS :

On the 27 day of January, 2000, personally appeared before me JERRY PRESTON who being by me first duly sworn did declare he is the Manager of ROSEWOOD TOWNHOUSE, L.L.C. is the signer of the foregoing instrument, authorized to sign on behalf of ROSEWOOD TOWNHOUSE, L.L.C.


CATHY WAGNER
 NOTARY PUBLIC

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EXHIBIT A

RESIDENCES AT HOLMES CREEK

| <u>EXPENSES</u> | <u>YEARLY</u> | <u>MONTHLY</u> | <u>MONTHLY PER UNIT</u> |
|---------------------------|------------------|-----------------|-----------------------------|
| INSURANCE | 2500.00 | 208.33 | 7.44 |
| LAWN CARE | 11,310.00 | 942.48 | 3.66 |
| SNOW REMOVAL | 3807.80 | 317.28 | 11.33 |
| SAVINGS | 1000.00 | 83.33 | 2.98 |
| TAXES | 1800.00 | 150.00 | 5.36 |
| ATTORNEY FEES | 600.00 | 50.00 | 1.79 |
| LAWN WATER | 600.00 | 50.00 | 1.79 |
| AREA MAINTENANCE | 500.00 | 41.66 | 1.49 |
| OUTSIDE LIGHTING | 500.00 | 41.66 | 1.49 |
| OFFICE SUPPLIES | 300.00 | 25.00 | .89 |
| ACCOUNTING FEES | 300.00 | 25.00 | .89 |
| MISC. CONTINGENCIES | 300.00 | 25.00 | .89 |
| TOTAL EXPENSES | 23,617.00 | 1,968.08 | 70.00 |

BY-LAWS
OF
RESIDENCES AT HOLMES CREEK
a Non-Profit Corporation

ARTICLE I

NAME AND LOCATION

The name of the corporation is **RESIDENCES AT HOLMES CREEK**, hereinafter referred to as the "Corporation." The principal office of the Corporation shall be located in Farmington, Utah, but meetings of members and trustees may be held at such places within the State of Utah as may be designated by the Board of Trustees.

ARTICLE II

DEFINITIONS

Section 2.1. "Common Areas and Facilities" shall mean all real property owned and set aside within the Project for the common use and enjoyment of the Owners.

Section 2.2. "Corporation" shall mean and refer to **RESIDENCES AT HOLMES CREEK**, A Utah Non-Profit Corporation, its successors and assigns.

Section 2.3. "Declarant" shall mean and refer to ROSEWOOD TOWNHOUSE, L.L.C., its successors and assigns.

Section 2.4. "Declaration" shall mean and refer to the Enabling Declaration of Covenants, Conditions and Restrictions of **RESIDENCES AT HOLMES CREEK**, PHASES 1, 2, 3, 4 and 5, a PRUD, applicable to the properties within the Project and recorded in the Office

Section 2.5. "Lot" shall mean and refer to any planned unit development lot of **RESIDENCES AT HOLMES CREEK, PHASES 1, 2, 3, 4 and 5, a PRUD.**

Section 2.6. "Member" shall mean and refer to each of those persons entitled to membership in the Corporation as provided in the Declaration.

Section 2.7. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Project, including contract buyers, but excluding those having such interest merely as security for the performance of an obligation.

Section 2.8. "Project" shall mean and refer to the planned unit development constructed on that certain real property described in the Enabling Declaration of Covenants, Conditions and Restrictions of **RESIDENCES AT HOLMES CREEK, PHASES 1, 2, 3, 4 and 5, a PRUD**, recorded in the office of the Davis County Recorder, and such additional properties as may hereafter be brought within the jurisdiction of the Corporation.

Section 2.9. All other references used, but not otherwise defined herein, shall have the meanings defined in the Declaration.

ARTICLE III

MEETINGS OF THE MEMBERS OF THE CORPORATION

Section 3.1. Annual Meeting. An annual meeting of Owners shall be held at the Project on the fourth Monday of January, or at such other time not more than thirty (30) days before or after such date, as may be designated by written notice of the Board of Trustees, or their designate, delivered to the Owners not less than ten (10) days prior to the date fixed for

said meeting. At the annual meeting, elections shall be held to elect members of the Board of Trustees, financial reports shall be given and such other business conducted as may be properly presented.

Section 3.2. Special Meetings. Special meetings of the Lot Owners may be called at any time by written notice signed by majority of the board of Trustees, or by the Owners having two-thirds (2/3) of the total votes, delivered not less than fifteen (15) days prior to the date fixed for said meeting. Such meeting shall be held on the Project, and the notice thereof shall state the date, time and matters to be considered.

Section 3.3. Quorum. A quorum for the transaction of business at an Owner's meeting shall consist of sixty percent (60%) of all Lot Owners. If a quorum is not present at an Owner's meeting, whether regular or special, the meeting may be adjourned and rescheduled. No notice of such rescheduled meeting shall be required. A quorum for the transaction of business at the rescheduled meeting shall be fifty percent (50%) of the voting required at the first meeting.

Section 3.4. Voting at Meeting of Lot Owners. At any meeting of owners, each owner shall be entitled to one vote for the Owner's ownership interest in each Lot. Any Owner may attend and vote at such meeting in person or by agent duly appointed in writing signed by the Owner and filed with the Board of Trustees. Where there is more than one record owner for any Lot, any or all such owners may attend any meetings of the owners, but they must act unanimously in order to cast the votes to which they are entitled. The Board of Trustees may accept the votes cast by any one of the record owners of a lot, unless such votes are objected to by any of the other record owners of such Lot, and any disagreement between such record

owners shall be resolved among themselves; provided, however, that if the record owners are unable to resolve the disagreements among themselves and act unanimously, the Board of Trustees shall not accept the votes of such owners.

Section 3.5. Notices. Any notice permitted or required to be delivered as provided herein may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered twenty-four (24) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed (a) to each such person at the address given by such person to the Board of Trustees or Manager for the purpose of service of such notice, or (b) to the address of the Lot owner by such person, if no address has been given to the Board of Trustees or the Manager. Such address may be changed, from time to time, by notice in writing to the Board of Trustees or Manager.

Section 3.6. Proxies. At all meetings of members, each member may vote either in person or by proxy. All proxies shall be in writing duly signed and dated by the voting member and filed with the Secretary of the Corporation. Every proxy shall be revocable either in writing or personal appearance and shall be automatically void upon conveyance by the member of his Lot.

Section 3.7. Control by Declarant. Notwithstanding any other provision herein to the contrary, the Declarant shall have the sole voting rights for any purpose whatever in the governing and operating of the Corporation until such time as the members elect to assume voting rights hereunder. The members shall not be entitled to make any such election until the earlier of:

- (a) The date by which seventy-five percent (75%) of the lots have

been conveyed to lot purchasers; or

- (b) Two (2) years after recording this Declaration.

ARTICLE IV

SELECTION AND TERM OF THE BOARD OF TRUSTEES

Section 4.1. Number. The affairs of this Corporation shall be managed by a Board of three (3) Trustees who need not be members of the Corporation.

Section 4.2. Term of Office. At the first annual meeting the members shall elect one (1) Trustee to serve for a term of one (1) year; one (1) Trustee to serve for a term of two (2) years; and one (1) Trustee to serve for a term of three (3) years; and at each annual meeting thereafter the members shall elect one (1) Trustee for a term of three (3) years.

Section 4.3. Removal. Any trustee may be removed from the Board, with or without cause, by a majority vote of the voting members of the Corporation. Upon the death, resignation or removal of a Trustee, a successor Trustee shall be selected by the remaining members of the Board and shall serve for the unexpired term of the predecessor.

Section 4.4. Compensation. No Trustee shall receive compensation for any service that Trustee may render to the Corporation. Any Trustee, however, may be reimbursed for his or her actual expenses incurred in the performance of his or her duties.

Section 4.5. Action Taken Without a Meeting. The Board of Trustees shall have the authority to take any action in the absence of a meeting which the Trustees could take at a meeting by obtaining of the written waiver and approval of all Trustees. Any action so approved shall have the same force and effect as though taken at a meeting of the Trustees.

ARTICLE V**NOMINATION AND ELECTION OF TRUSTEES**

Section 5.1. Nomination. Nomination for election to the Board of Trustees shall be made either (a) by a Nominating Committee, or (b) from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Trustees, and one (1) or more voting members of the Corporation. The Nominating Committee shall be specified and appointed by the board of Trustees prior to each annual meeting of the members, to serve from the close of such annual meeting until the close of the next annual meeting, and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for elections to the Board of Trustee as it shall, in its discretion, deem proper.

Section 5.2. Election. Elections to the Board of Trustees shall be by secret written ballot, unless all of the members present elect otherwise. At such elections, the voting members of proper proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected.

ARTICLE VI**MEETING OF BOARD OF TRUSTEES**

Section 6.1. Regular Meetings. Regular meetings of the Board of Trustee may be held monthly, or at least once every three (3) months, without notice, at such place and hour as may be fixed, from time to time, by resolution of the Board.

Section 6.2. Special Meetings. Special meetings of the Board of Trustees shall

be held when called by (a) the President of the Corporation, or (b) by any two (2) Trustees, after not less than three (3) days written notice to each Trustee.

Section 6.3. Quorum. A majority of the Trustees shall constitute a quorum for the transaction of business. Every act or decision authorized by a majority of the Trustees present at a duly called and constituted meeting shall represent the act or decision of the entire Board of Trustees.

ARTICLE VII

POWERS AND DUTIES OF THE BOARD OF TRUSTEES

Section 7.1. Powers. The Board of Trustees shall have the power to:

(a) adopt and publish rules and regulations governing the use of the common areas and facilities by the members and their guests, and to establish penalties for any infraction thereof; and

(b) to suspend the voting rights and right to use of the common areas and facilities of a member during any period in which such member shall be in default in the payment of any assessment levied by the Corporation. such rights may also be suspended after notice and hearing, for a period not to exceed sixty (60) days from infraction of published rules and regulations; and

(c) to exercise on behalf of the Corporation all powers, duties and authority vested in or delegated to the Corporation and not reserved to the membership by other provisions of these By-Laws, the Articles of Incorporation or the Declaration; and

(d) to declare the office of a member of the Board of Trustees to be vacant if such member shall be absent from three (3) consecutive regular meetings of the Board

of Trustees; and

(e) to employ a manager, an independent contractor, and employees as they deem necessary, and to prescribe their duties.

Section 7.2. Duties. It shall be the duty of the Board of Trustees to:

(a) cause to be kept a complete record of all its acts and the affairs of the Corporation and to present a statement thereof to the members at the annual meeting of the Corporation; and to present such statement at any special meeting upon written request given at least ten (10) days prior to such meeting by one-fourth (1/4) of the members entitled to vote; and

(b) to supervise all officers, managers, agents and employees of the Corporation, and to assure that their duties are properly performed; and

(c) as more fully provided in the Declaration, to:

(i) fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period; and

(ii) to send written notice of any assessment to every owner subject thereto at least thirty (30) days in advance of the annual assessment; and

(iii) within its discretion the Board of Trustees may foreclose any lien against any property for which assessments are not paid or bring an action at law against the owner personally, as authorized by the Declaration; and

(d) to issue, or to cause to be issued, upon demand by any voting member, a written statement setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of any statement. If a signed statement verifies that an assessment has been paid, such statement shall be conclusive evidence

of payment; and

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(e) to acquire and maintain adequate liability and hazard insurance on the common areas and facilities owned by the Corporation; and

(f) to require all officers, managers and employees having fiscal responsibilities to be bonded as the Board may deem appropriate; and

(g) to cause the common areas and facilities to be maintained, including the sidewalks in the public right-of-way areas; and

(h) to provide adequate arrangement for snow removal of all common areas and facilities including the sidewalks in the public right-of-way areas.

(i) to take all other actions directed or permitted in the Declaration.

ARTICLE VIII

OFFICERS AND THEIR DUTIES

Section 8.1. Enumeration of Offices. The officers of the Corporation shall be a President, Vice-President, and a Secretary/Treasurer, and such other officers as the Board of Trustees may, from time to time, create by resolution.

Section 8.2. Election of Officers. The election of the officers shall take place at the first meeting of the board of Trustees following each annual meeting of the members.

Section 8.3. Term. The officers of the Corporation shall be elected annually by the Board and each shall hold office of one (1) year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

Section 8.4. Special Appointments. The board may elect such other officers as the affairs of the Corporation may require, each of whom shall hold office for such period,

have such authority, and perform such duties as the Board may, from time to time, determine necessary.

Section 8.5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time upon giving written notice to the board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified herein, and unless otherwise specified to make it effective.

Section 8.6. Vacancies. A vacancy in any office may be filled by appointment from the Board of Trustees. The officer appointed to such vacancy shall have all of the powers of the appointed office and shall serve for the remainder of the term of the officer replaced.

Section 8.7. Multiple Offices. No person shall simultaneously hold more than one (1) of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article. The Secretary/Treasurer office is held by one person.

Section 8.8. Duties. The duties of the officers are as follows:

The President shall:

- (a) preside at all meetings of the Board of Trustees and members and shall assure that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes;
- (b) shall appoint, remove and fix the compensation of all managers, agents and employees of the Corporation subject to approval by the Board of Trustees;

(c) shall enforce these By-Laws and perform all of the duties and obligations required or established by law as incident to the office of President.

The Vice-President shall:

(d) act in the absence or inability of the President, rendering and performing all duties of the President with full authority, and shall exercise and discharge such other duties as may be required of him by the President.

The Secretary/Treasurer shall:

(e) record the votes and keep the Minutes of all meetings and proceedings of the Board of Trustees and of the members; keep the seal, if any, of the Corporation and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the members; keep appropriate current records showing the members of the Corporation together with their addresses; and shall perform such other duties as required by the President.

(f) receive and attend to all correspondence and perform all of the duties and obligations incident to the office.

(g) receive and deposit in appropriate bank accounts the money of the Corporation and such funds as directed by the President or by resolution of the Board;

(h) sign all checks and promissory notes of the Corporation;

(i) keep proper books of account;

(j) cause an annual examination by the Treasurer of the Corporation books to be made at the completion of each fiscal year;

(k) prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting.

ARTICLE IX

COMMITTEES

The Corporation may appoint a Management Committee as provided in these By-Laws. In addition, the Board of Trustees shall appoint other committees as deemed appropriate in carrying out the requirements and purposes of the Corporation.

ARTICLE X

BOOKS AND RECORDS

The books, records and papers of the Corporation shall, during reasonable business hours, be subject to inspection by voting members. The Declaration, Articles of Incorporation and these By-Laws shall be available for inspection by any member at the principal office of the Corporation, where copies may be purchased at reasonable cost.

ARTICLE XI

SEAL OF THE CORPORATION

The seal of the Corporation, if the Board of Trustees determines to obtain a seal, shall be in such form as selected by the Board of Trustees.

ARTICLE XII

AMENDMENTS

Section 12.1. Amendment of By-laws. These By-Laws may be amended, at a regular or special meeting of the voting members upon the vote of a majority of a quorum of members present in person or by proxy.

Section 12.2. Conflict in Documents. In the case of any conflict between the Articles of Incorporation and these By-Laws, the Article of Incorporation shall control; and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

ARTICLE XIII

MISCELLANEOUS

Section 13.1. Governing Laws. These By-Laws shall be interpreted according to the laws of the State of Utah.

Section 13.2. Fiscal Year. The fiscal year of the Corporation shall begin on the first day of January and end on the 31st day of December every year, except that the first fiscal year shall begin on the date of incorporation.

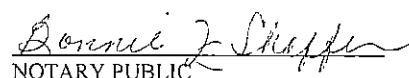
IN WITNESS WHEREOF, these By-Laws are executed the 28 day of January, 2000.

RESIDENCES AT HOLMES CREEK, PHASES 1, 2, 3, 4, and 5, A PRUD

By: 
JERRY PRESTON, Trustee

STATE OF UTAH :
: ss :
COUNTY OF DAVIS :

On the 28 day of January, 2000, personally appeared before me JERRY PRESTON, who being first duly sworn did say that he is the Trustee of RESIDENCES AT HOLMES CREEK, and that the above document was executed on behalf of said corporation.


NOTARY PUBLIC

